United States Court of Appeals

for the Second Circuit

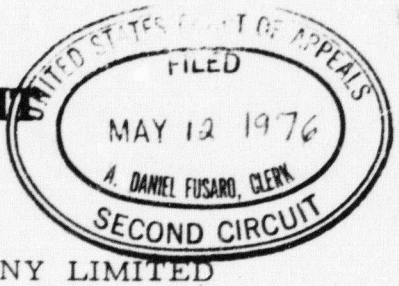
APPENDIX

76-5018

UNITED STATES COURT OF APPEALS

for the

SECOND CIRCUIT



In Re

PROVINCIAL REFINING COMPANY LIMITED

and

NEWFOUNDLAND REFINING COMPANY LIMITED,

Bankrupts.

THE CLARKSON COMPANY LIMITED, as Trustee in Bankruptcy, appointed by the Supreme Court of the Province of Newfoundland, of the property of Newfoundland Refining Company Limited and Provincial Refining Company Limited,

Plaintiff-Appellee,

-against-

JOHN M. SHAHEEN, ROY M. FURMARK, ALBIN W. SMITH, PHILIP GANDERT, PETER L. CARAS, PAUL W. RISHELL, WILLIAM J. SHERIDAN, and JOHN DOE,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

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INDEX

	Page
Docket Entries	1
Complaint	3
Order to Show Cause	8
Affidavit (J.A.Barist) in Support	11
Exhibit A	22
Exhibit B	27
Exhibit C	32
Exhibit D	36
Exhibit E (omitted)	
Exhibit F	40
Memorandum of Law (White & Case)	48
Affidavit (R.deY.Manning) in Opposition to Temporary Restraining Order	66
Exhibit A	91
Exhibit B	102
Exhibit C	107
Exhibit D	113
Exhibit E	115
Exhibit F	116
Exhibit G	119
Exhibit H	130
Exhibit (1)(C)(1)	171
Exhibit (1)(Z)(1)	177
Exhibit (4)	179
Exhibit I	181
Memorandum of Law (Manning, Carey & Redmond)	197
Exhibit A	204
Exhibit B	239
Defendants' Notice of Appeal	246
Affidavit (D.C.Hoover) In Support of Preliminary Injunction	248

Affidavit (J.A.Barist) In Support of Preliminary Injunction 252

Exhibit A 258

Exhibit B 262

Exhibit C 265

Exhibit D (parts omitted) 291

Exhibit E 313

Exhibit F 317

Exhibit G 321

Exhibit H 322

Exhibit I 323

Memorandum of Law (White & Case) 361

Memorandum of Law (Manning, Carey & Redmond) 386

Defendants' Notice of Appeal 389

* * * * * *

Transcript of Oral Argument April 1, 1976 391

DOCKET ENTRIES

DIST/OFFICE	DOCKET YR.	DOCKET NUMBER	FILING DATE MO.	DAY	YEAR	J	N/S	O	R	R 23	$ DEMAND OTHER	JUDGE NUMBER	JURY DEM.	DOCKET YR.	DOCKET NUMBER
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														Owen,J.	

PLAINTIFFS

In Re

PROVINCIAL REFINING COMPANY LIMITED
and
NEWFOUNDLAND REFINING COMPANY LIMITED,
Bankrupts.

THE CLARKSON COMPANY LIMITED, as Trustee in Bankruptcy, appointed by the Supreme Court of the Province of Newfoundland, of the property of Newfoundland Refining Company Limited and Provincial Refining Company Limited

DEFENDANTS

SHAHEEN, JOHN M.,
FURMARK, ROY M.,
SMITH, ALBIN W.,
GANDERT, PHILIP,
CARAS, PETER L.,
RISHELL, PAUL W.,
SHERIDAN, WILLIAM J. and
DOZ, JOHN

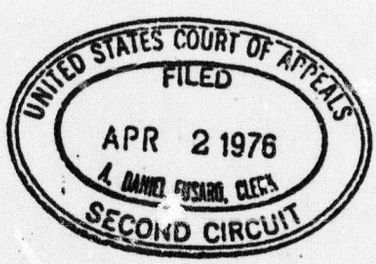
CAUSE

Action by Bankruptcy Trustee to recover property.

rs

ATTORNEYS

White & Case
14 Wall St.,N.Y.C.10005
732-1040



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U.S. DISTRICT COURT DOCKET

Docket Entries

CLARKSON COMPANY LIMITED, etc. -v- SHAHEEN, JOHN M., et al. 76 CIV 1373

DATE	NR.	PROCEEDINGS
03-23-76	1	Filed complaint & issued summons.
03-23-76	2	Filed Pltff's. affidavit & Order to Show Cause for a preliminary injunction, ret. 4-1-76 at 10:00 am .....Owen,J.
03-23-76	3	Filed Pltff's. memorandum in support of motion for a preliminary injunction.
03-26-76	4	Filed Defts'. notice of appeal from the order of Owen,J. granting an Order to Show and Cause and entering a Temporary Restraining Order and from the Court's refusal to vacate the temporary restraining order. (mailed notice).
03-29-76	5	Filed affidavit of service of the order to show cause by Dwight A. Healy on 3-23-76.
03-29-76	6	Filed affidavit of service of the memorandum in support of motion for preliminary injunction by Dwight A. Healy on 3-23-76.
03-30-76	7	Filed Defts'. memorandum of law in support of motion to dismiss or for a stay.
04-01-76	8	Filed Pltff's. affidavit in support of application for a preliminary injunction.
04-01-76	9	Filed Pltff's. reply memorandum.
04-02-76	10	Filed Defts'. supplemental memorandum of law.
04-2-76	11	Filed Defendant's notice of appeal to USCA from the preliminary injudction order dated April 1-76. Mailed notice.
04-2-76	12	Filed defts' Newfoundland Refining Co. Ltd, Provincial Refining Co. Ltd Affidavit in opposition to Order to Show Cause; supporting exhibits.

A TRUE COPY
RAYMOND F. BURCHARDT, Clerk

By _____
Deputy Clerk

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COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In Re PROVINCIAL REFINING COMPANY LIMITED and NEWFOUNDLAND REFINING COMPANY, LIMITED, Bankrupts.	
THE CLARKSON COMPANY LIMITED, as Trustee in Bankruptcy, appointed by the Supreme Court of the Province of Newfoundland, of the property of Newfoundland Refining Company Limited and Provincial Refining Company Limited, Plaintiff, -against- JOHN M. SHAHEEN, ROY M. FURMARK, ALBIN W. SMITH, PHILIP GANDERT, PETER L. CARAS, PAUL W. RISHELL, WILLIAM J. SHERIDAN, and JOHN DOE, Defendants.	COMPLAINT Civ.

Plaintiff, The Clarkson Company Limited ("Clarkson"), as Trustee in Bankruptcy, appointed by the Supreme Court of the Province of Newfoundland, of the property of Newfoundland Refining Company Limited and Provincial Refining Company Limited, by its attorneys White & Case, for complaint against defendants:

1. The matter in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand Dollars ($10,000.00).

Complaint

2. This Court has jurisdiction of this action pursuant to 28 U.S.C. §1332 by reason of the amount in controversy and the diversity of citizenship between the parties.

3. Clarkson is a corporation organized and existing under the laws of the Province of Ontario, Canada. Clarkson is licensed by the Bankruptcy Superintendent of Canada to act as a Trustee in Bankruptcy in the Province of Newfoundland, as well as other Canadian jurisdictions.

4. Newfoundland Refining Company Limited ("NRC") is a corporation organized and existing under the laws of the Province of Newfoundland, with a registered office at 85 Elizabeth Avenue, St. John's, Province of Newfoundland.

5. Provincial Refining Company Limited ("PRC") is a corporation organized and existing under the laws of the Province of Newfoundland, with a registered office at 85 Elizabeth Avenue, St. John's, Province of Newfoundland.

6. On March 12, 1976 NRC and PRC were adjudged bankrupts and Clarkson was appointed by the Supreme Court of the Province of Newfoundland Trustee in Bankruptcy for the property of NRC and PRC.

7. Upon information and belief, defendant John M. Shaheen ("Shaheen") is Chairman of the Board of Directors of NRC and Chairman of the Board of Directors of PRC and is a citizen of a State of the United States.

8. Upon information and belief, defendant Roy M. Furmark ("Furmark") is a Director, Executive Vice President and Treasurer of NRC and a Director, Executive Vice President and Treasurer of PRC and is a citizen of a State of the United States.

9. Upon information and belief, defendant Albin W. Smith ("Smith") is a Director and Senior Vice President of NRC and a Director and Senior Vice President of PRC and is a citizen of a State of the United States.

10. Upon information and belief, defendant Philip Gandert ("Gandert") is a Director, Vice President, Secretary and Assistant Treasurer of NRC and a Director, Vice President, Secretary and Assistant Treasurer of PRC and is a citizen of a State of the United States.

11. Upon information and belief, defendant Peter L. Caras ("Caras") is a Director, Vice President, Assistant Secretary and Assistant Treasurer of NRC and a Director, Vice President, Assistant Secretary and Assistant Treasurer of PRC and a citizen of a State of the United States.

12. Upon information and belief, defendant Paul W. Rishell ("Rishell") is a Director and Vice President of NRC and is a Director and Vice President of PRC and a citizen of a State of the United States.

13. Upon information and belief, defendant William J. Sheridan ("Sheridan"), is a Director of PRC and is a citizen of a State of the United States.

14. John Doe is a party or parties not presently known to plaintiff, and a citizen of a State of the United States.

15. Upon information and belief, Shaheen, Furmark, Smith, Gandert, Caras, Rishell and Sheridan (collectively "the officers and directors") constitute all the directors of NRC and PRC resident in the United States of America, and the principal officers of NRC and PRC resident

in the United States, and control the property of NRC and PRC situated in the State of New York.

16. Title to all property of NRC and PRC vested in Clarkson as Trustee in Bankruptcy upon its appointment as trustee of the estates of NRC and PRC by the Supreme Court of the Province of Newfoundland.

17. The principal books and records of NRC and PRC are located at the offices of those companies at 90 Park Avenue, New York, New York. These books and records are in the possession of, or controlled by, the defendants.

18. Upon information and belief, there exist other assets of PRC and NRC, including deposits in an amount in excess of $10,000 in banks located within the City of New York.

19. Clarkson has presented itself at the offices of NRC and PRC at 90 Park Avenue, New York, New York after its appointment as Trustee in Bankruptcy and demanded immediate possession and control of the books and records of NRC and PRC.

20. Defendants, through their agents, refused to turn over possession of the books and records and refused Clarkson access to any of the books and records of NRC and PRC.

21. Unless and until it is in possession and control of all of the property of NRC and PRC to which it now has legal title by virtue of its appointment as Trustee in Bankruptcy for NRC and PRC, including, but not limited to, all books and records, Clarkson will not be able to discharge its responsibilities as Trustee in Bankruptcy of NRC and PRC. Clarkson, acting as Trustee in Bankruptcy, and

the creditors of NRC and PRC represented by Clarkson as Trustee in Bankruptcy, will be irreparably injured in the sum of many millions of dollars if Clarkson is not given immediate possession and control of all of the property of NRC and PRC.

22. Clarkson has no adequate remedy at law.

WHEREFORE, Clarkson demands judgment against all the defendants as follows:

(a) An order of permanent injunction enjoining defendants from destroying, altering or removing any books or records of NRC or PRC;

(b) An order of permanent injunction enjoining defendants from disposing, disbursing, or removing any property of NRC or PRC;

(c) An order of permanent injunction requiring defendants to deliver to Clarkson possession of all property of NRC and PRC;

(d) Granting to Clarkson such other and further relief as to the Court may seem just and proper, together with the costs and disbursements of this action.

Dated: New York, New York
March 23, 1976

WHITE & CASE

By Jeffrey A. Barist
(A Member of the Firm)
Attorneys for The Clarkson Company Limited As Trustee In Bankruptcy for Provincial Refining Company Limited and Newfoundland Refining Company Limited
14 Wall Street
New York, New York 10005
(212) 732-1040

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8

ORDER TO SHOW CAUSE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In Re	:
PROVINCIAL REFINING COMPANY LIMITED	:
and	:
NEWFOUNDLAND REFINING COMPANY, LIMITED,	:
Bankrupts.	:
THE CLARKSON COMPANY LIMITED, as Trustee in Bankruptcy, appointed by the Supreme Court of the Province of Newfoundland, of the property of Newfoundland Refining Company Limited and Provincial Refining Company Limited,	:
Plaintiff,	:
-against-	:
JOHN M. SHAHEEN, ROY M. FURMARK, ALBIN W. SMITH, PHILIP GANDERT, PETER L. CARAS, PAUL W. RISHELL, WILLIAM J. SHERIDAN, and JOHN DOE,	:
Defendants.	:

ORDER TO SHOW CAUSE

76 C.V. 1373 (R.O.)

Upon reading and filing the annexed affidavit of Jaffrey A. Barist, sworn to March 23, 1976, the exhibits annexed thereto and the summons and complaint herein,

LET the defendants or their attorneys show cause at the United States Court House, Foley Square, New York, New York, on the 1st day of ~~March~~ April, 1976, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, why an Order of preliminary injunction

R.O.

pursuant to Rule 65 should not be made herein:

B/ 1. Enjoining defendants and their agents, servants, employees and attorneys, and other persons in active participation with them who receive actual notice of the Order, from destroying, altering, secreting or removing any books or records of NRC or PRC;

2. Requiring defendants and their agents, servants, employees and attorneys, and other persons in active participation with them who receive actual notice of the Order, to deliver immediately into the possession and control of plaintiff, The Clarkson Company Limited, as Trustee in Bankruptcy, and its agents ("Clarkson"), all books and records of NRC and PRC;

3. Enjoining defendants and their agents, servants, employees and attorneys, and other persons in active participation with them who receive actual notice of the Order, from disposing, disbursing, secreting or removing any property of NRC and PRC; /B

C/ 4. Requiring defendants and their agents, servants, employees and attorneys, and other persons in active participation with them who receive actual notice of the Order, to deliver into the possession and control of Clarkson all property of NRC and PRC; and

5. For such other and further relief as to the Court may seem just and proper. /C

Good cause appearing therefor,

IT IS ORDERED THAT pending the hearing and determination of this motion, defendants and their agents, servants, employees and attorneys, and other persons in

Order To Show Cause

active participation with them who receive actual notice of the Order:

A/ (1) Are restrained from transferring any of the books and records of NRC and PRC from their present location and from destroying, altering or secreting any of the books and records of NRC and PRC;

(2) Are directed to give Clarkson immediate and continuing access to with the right to inventory, examine and copy
R.O. ~~control of~~ the books and records of NRC and PRC; and

(3) Are restrained from disbursing, removing or secreting any other property of NRC or PRC in their custody or control. /A

FOR the purposes of this Order the term "books and records" shall include all books and records of whatever kind, including, but not limited to: accounting records (including books of original entry), banking records, sales records, purchase records, title papers, insurance policies, tax records and returns, contractual agreements, records relating to locations of ships and lists of creditors.

SERVICE of a copy of this Order to Show Cause and the supporting papers upon the defendants on or before
R.O. 12:00 o'clock on the 24th day of March, 1976 shall be deemed sufficient.

SERVICE of papers in opposition shall be made upon White & Case, counsel for Clarkson, 14 Wall Street, New York, New York on or before
R.O. 12:00 o'clock on the 30th day of March, 1976 by hand

Dated: New York, New York
March 23, 1976

SO ORDERED:

s/ L Owen
U.S.D.J.

AFFIDAVIT OF JEFFREY A. BARIST

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In Re PROVINCIAL REFINING COMPANY LIMITED and NEWFOUNDLAND REFINING COMPANY, LIMITED, Bankrupts.	AFFIDAVIT IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION AND APPLICATION FOR TEMPORARY RESTRAINING ORDER
THE CLARKSON COMPANY LIMITED, as Trustee in Bankruptcy, appointed by the Supreme Court of the Province of Newfoundland, of the property of Newfoundland Refining Company Limited and Provincial Refining Company Limited, Plaintiff, -against- JOHN M. SHAHEEN, ROY M. FURMARK, ALBIN W. SMITH, PHILIP GANDERT, PETER L. CARAS, PAUL W. RISHELL, WILLIAM J. SHERIDAN and JOHN DOE, Defendants.	76 Civ. 1373 (R.D.)

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JEFFREY A. BARIST, having been duly sworn, says:

I am a member of the bar of this Court and of the firm of White & Case, attorneys for The Clarkson Company Limited ("Clarkson"), as Trustee in Bankruptcy of Newfoundland Refining Company Limited ("NRC") and Provincial

Refining Company Limited ("PRC"). I make this affidavit in support of Clarkson's motion for a preliminary injunction and application for a temporary restraining order.

Clarkson requests an order for a preliminary injunction:

(a) Enjoining defendants from destroying, altering, secreting or removing any books or records of NRC or PRC;

(b) Enjoining defendants from disposing, disbursing, secreting or removing any property of NRC or PRC;

(c) Requiring defendants to give Clarkson custody and control of all books and records of NRC and PRC; and

(d) Requiring defendants to give Clarkson custody and control of all property of NRC and PRC.

The temporary restraining order here sought would provide that, pending the hearing and determination of the motion for a preliminary injunction, the defendants be required to (a) refrain from transferring any of the books and records of NRC and PRC from their present location and from destroying, altering or secreting any of the same; and (b) give Clarkson immediate control of the books and records of NRC and PRC; and (c) restrain defendants from disbursing, removing or secreting any other property of NRC and PRC in their custody or control.

Clarkson's Appointment as Trustee in Bankruptcy of NRC and PRC

On February 13, 1976, Atlantic Trading (Delaware) Corporation ("Atlantic") filed with the Supreme Court of the

Province of Newfoundland, Canada, pursuant to the Canadian Bankruptcy Act (Canada), R.S., c. 1970, Chap. B-3 (the "Canadian Bankruptcy Act") Petitions for Receiving Orders alleging that PRC and NRC were insolvent and had ceased to meet their liabilities generally as they became due.

On March 12, 1976, the Chief Justice of the Supreme Court of the Province of Newfoundland, Canada, issued its Receiving Orders (the "Orders") against NRC and PRC adjudging NRC and PRC bankrupt and appointing Clarkson as Trustee in Bankruptcy of the property of NRC and PRC. Attested copies of such Orders are annexed as Exhibits A (Order relating to NRC) and B (Order relating to PRC) hereto.*

The Orders of the Supreme Court of the Province of Newfoundland adjudicating NRC and PRC bankrupts and appointing Clarkson as Trustee in Bankruptcy resulted only after adversary proceedings in which PRC and NRC through counsel contested the adjudication of bankruptcy. Notice was given to the corporations after the filing of the Petitions for Bankruptcy pursuant to Canadian law, and a week-long trial was held before Chief Justice Mifflin of the Supreme Court of the Province of Newfoundland on March 8 through 12, 1976. The Orders of Adjudication of Bankruptcy wereissued only after all parties had been heard. The bankruptcy proceedings established that PRC and NRC were indebted to the amount of hundreds of millions of dollars and were hopelessly insolvent. Included in the major creditors are the Government of the Province of Newfoundland and the Government of the United Kingdom.

* Original copies of the Orders duly authenticated by the Vice Consul of the United States in Newfoundland are in counsel's possession and are available for examination or filing if the Court so requests.

Clarkson is licensed by the Bankruptcy Superintendent of Canada to carry on a practice as a Trustee in Bankruptcy in all the provinces of Canada except Quebec (where any such trustee must be an individual) and British Columbia and believes that it conducts the largest such practice in Canada. Clarkson and its predecessors have conducted a bankruptcy practice for more than 100 years.

Clarkson has had extensive practical experience in recent years with major bankruptcies having international ramifications, including the proceedings in connection with the liquidations of Atlantic Acceptance Corporation and I.O.S., Ltd., in the latter of which matters Clarkson served as liquidator. In this connection, Clarkson has acted in many jurisdictions other than Canada, including the United States.

Clarkson's Title to Property of
NRC and PRC and Defendant's Refusal
To Turn Over Property of NRC and PRC

Under Article 50, Section 5 of the Canadian Bankruptcy Act, title to all property of a bankrupt vests immediately in the trustee in bankruptcy upon his appointment. Thus title to the property of NRC and PRC located in New York in question herein vested in Clarkson, as Trustee in Bankruptcy, by operation of law on March 12, 1976, the day of its appointment as Trustee in Bankruptcy. Article 12, Section 2 of the Canadian Bankruptcy Act specifically provides that the trustee "shall as soon as may be, take possession of the deeds, books, records and documents and all other property of the bankrupt..." and "is entitled to enter upon any premises on which the books, records or

property of the bankrupt may be...". Moreover, Article 12, Section 4 of the Canadian Bankruptcy Act explicitly provides that "no person is, as against the trustee, entitled to withhold possession of the books of account belonging to the bankrupt."

On February 13, 1976 Atlantic applied for the appointment of an Interim Receiver of NRC and PRC. The Supreme Court of the Province of Newfoundland granted this petition and Clarkson was appointed Interim Receiver of NRC and PRC. Pursuant to the authority vested in it as Interim Receiver Clarkson commenced its examination of the affairs of NRC and PRC and gained limited access from the defendants to the books and records of NRC and PRC located in New York.

After Clarkson's appointment as Trustee on March 12, 1976, defendants refused to give Clarkson any access to the books and records of PRC and NRC. Clarkson went to the offices of NRC and PRC located at 90 Park Avenue, New York, New York 10016 and presented true and correct copies of the Orders (Exhibits A and B hereto) of the Supreme Court of the Province of Newfoundland. Clarkson further left with agents of defendants copies of Notice to Bankrupt Corporations which outlined the duties of the bankrupt (copies of said Notices are attached hereto as Exhibit C [as to NRC] and D [as to PRC]). The Notices are acknowledged as having been received in Newfoundland by Homer White, President of NRC and PRC. Clarkson demanded immediate possession and control of all property of NRC and PRC, including the books and records of the corporations.

Defendants, by their agents, refused to turn over

possession of the books and records of NRC and PRC and refused Clarkson access to any of said books and records.

Clarkson thereupon filed a complaint in this Court seeking Orders of permanent injunction requiring defendants to turn over to Clarkson all property of NRC and PRC. A copy of the complaint is annexed as Exhibit E.

Facts Supporting the Need for Immediate Control of the Books and Records

PRC is the owner of a refinery for petroleum products at Come-By-Chance, in the Province of Newfoundland (the "Refinery"). NRC, by written agreement, is the operator of the Refinery and manager of the business of PRC. Both NRC and PRC are parts of a complex web of interrelated corporations, all ultimately owned or controlled by John M. Shaheen ("Shaheen").

Although knowledge of the workings, interrelationships and financial arrangements among the various members of the Shaheen group is limited by the dearth of publicly available information, certain of the facts which are known establish why the Trustee in Bankruptcy must have immediate possession and control of all books and records of NRC and PRC. For example:

(i) Unaudited financial statements for NRC and PRC as of November 30, 1975 show those companies as having huge accounts receivable (approximately $49 million for NRC and $10 million for PRC) owing to them from other companies in the Shaheen group, including nearly $45 million owed by Shaheen Natural Resources Company, Inc. (a company wholly owned by

John M. Shaheen) to NRC and $455,320 owed by John M. Shaheen personally to NRC. It appears that millions of dollars were sent from NRC and/or PRC to Shaheen controlled companies at a time when NRC and PRC were, if not insolvent, known to be running losses of millions of dollars. The books and records of NRC and PRC thus far examined do not show what consideration was paid to NRC and PRC. Annexed as Exhibit F are summaries of inter-corporate receivables prepared by chartered accountants in the employ of Clarkson, based upon the access to the books and records of PRC and NRC previously given Clarkson by defendants.

(ii) The audited financial statements of PRC at December 31, 1974 disclose a capital deficit of some $58 million, a working capital deficiency of $116 million and a loss for the year of $58 million. Subsequent to this time substantial sums of money were paid to Shaheen related companies.

(iii) The unaudited financial statements of PRC to September 30, 1975 disclose a deficit of $164 million and a nine-month loss of $58 million.

(iv) About $10 million was "advanced" by NRC to Shaheen Natural Resources Company Inc. in 1975. No consideration to NRC has been shown.

The Petitions for Bankruptcy filed on February 13, 1976 in the Supreme Court of Newfoundland have evoked continual opposition and harassment from those controlling the bankrupt corporations. At the point of this affidavit,

the Shaheen group has filed at least four actions attempting to upset the Canadian bankruptcy. These are as follows:

(i) Newfoundland Refining Company Limited et ano v. Ataka America Inc. (76 Civ. 941 (S.D.N.Y.). After hearings before Judge Motley the action was voluntarily dismissed by plaintiff before any decision was rendered.

(ii) Provincial Refining Company et ano v. Kleinwort Benson Ltd. et ano (Supreme Court, New York County, Index No. 93740/76).

(iii) Provincial Refining Company Limited et ano v. Province of Newfoundland et ano (Supreme Court, New York County, Index No. 03960/76).

(iv) SNR Holding Company, Inc., as sole stockholder of Newfoundland Refining Company Limited and Provincial Refining Company Limited v. Ataka America Inc. et al. (Supreme Court, New York County, Index No. 03959/76). In this action Clarkson has moved to be substituted as plaintiff pursuant to CPLR §1017. The Shaheen group opposed on the grounds that it had filed an amended complaint adding Clarkson as a defendant on the same day that Clarkson was appointed Trustee in Bankruptcy. The Shaheen group in this action has not denied that Clarkson was appointed Trustee in Bankruptcy by the Supreme Court of New Foundland on March 12, but has contended that the filing of a "proposal" (akin to a plan for voluntary reorganization under Chapter XI under American law) in which the Shaheen group proposed another trustee, which was rejected by the Newfoundland Court, somehow affects Clarkson's appointment by the Orders of the Court annexed hereto as Exhibits A and B.

In all of these actions the Shaheen group sought to find a way to get the American court to enjoin the Canadian bankruptcy proceedings. None of these actions have succeeded and the Shaheen group has been without success in its attempt to harass and interfere with the Canadian bankruptcy proceedings. The Shaheen group has appealed the Canadian court's adjudication of bankruptcy, contending, inter alia, that the Canadian judge erred in not appointing the Shaheen group's choice of Trustee and plan of reorganization.

Need For Immediate Relief

The facts recited herein provide a reasonable basis for concluding that the control and operation of NRC and PRC by the defendant officers and directors of those companies have resulted in dissipation and waste of the assets of those companies and that funds have been "upstreamed" from PRC and NRC to other corporations within the Shaheen group or to Shaheen himself. The extent to which assets and revenues have been diverted, transferred, secreted, dissipated and wasted cannot be known unless and until the Trustee gains access to the books, records, accounts and other documents relating to the financial affairs of NRC and PRC.

Among the matters which demand immediate attention and action to conserve the assets of companies such as NRC and PRC are the following:

(i) Investigation and identification of any

payments which may be considered either as preferential or otherwise in fraud of creditors;

(ii) Identification and notification of the banks at which NRC and PRC maintain accounts so that disbursements will not be made to the prejudice of creditors;

(iii) Identification and notification of all creditors of the companies as to the pendency of bankruptcy proceedings so that creditors may present claims and Clarkson may examine the propriety of the claims; and

(iv) Identification of all assets, liabilities and obligations of NRC and PRC so that Clarkson, as Trustee in Bankruptcy, can effectively discharge its mandate to conserve the assets of the estates and effectively advise the Court in Newfoundland and the creditors of the companies how to proceed in order to optimize their return on the remaining assets of NRC and PRC.

In order to perform these and other vital duties as Trustee in Bankruptcy, it is obviously essential that Clarkson be granted immediate possession and control of NRC's and PRC's banking records, including, but not limited to, accounting records (including books of original entry), sales and purchase records, contractual agreements and records relating to the location and condition of assets.

The temporary restraining order sought by Clarkson provides for Clarkson's possession and control of the books and records of NRC and PRC. It poses no threat of injury to those companies of any kind whatsoever.

For the reasons set forth herein, it is respectfully submitted that temporary and preliminary relief is warranted by the circumstances of this case and that such relief is necessary for the protection of the estate and property of NRC and PRC, for the avoidance of irreparable injury to Clarkson in its efforts to discharge its responsibilities as an appointee of the Supreme Court of the Province of Newfoundland, and for the protection of the creditors of NRC and PRC, which consist of a diverse group of foreign governments and international companies with total claims of hundreds of millions of dollars.

I request this temporary restraining order ex parte because the facts as known indicate that there is substantial likelihood that the books and records will be altered, destroyed or secreted or that other property of the bankrupts may be secreted or disbursed if notice is given of this application.

No application for the relief sought herein has been made previously.

Jeffrey A. Barist

Sworn to before me this
23rd day of March, 1976.

EDNA R. SUSSMAN
Notary Public, State of New York
No. 31-4507710
Qualified in New York County
Commission Expires March 30, 1977

EXHIBIT A

CANADA)
PROVINCE OF NEWFOUNDLAND)
CITY OF ST. JOHN'S) ss:
CONSULATE GENERAL OF THE)
UNITED STATES OF AMERICA)

I, Alan F. Dahl, Vice Consul of the United States of America at St. John's, Newfoundland, Canada, duly commissioned and qualified, do hereby certify that Clarence H. Stirling, whose true signature and official seal are respectively subscribed and affixed to the annexed document, was on the 16th day of March 1976, the date thereof, Registrar in Bankruptcy for the Province of Newfoundland, to whose official acts faith and credit are due.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of the Consulate General of the United States of America at St. John's, Newfoundland, Canada this 18th day of March 1976.

A. F. Dahl

Alan F. Dahl
Vice Consul of the United States of America

Exhibit A

Exhibit A

1976 No. 338

IN THE SUPREME COURT OF NEWFOUNDLAND
TRIAL DIVISION

IN BANKRUPTCY

IN THE MATTER OF

The Bankruptcy Act
Chap. B-3, R.S.C. 1970

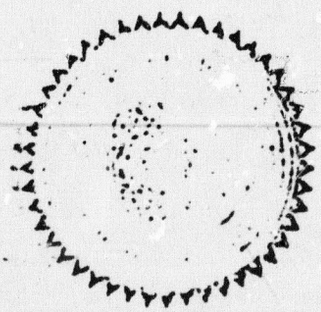
AND IN THE MATTER OF

Newfoundland Refining
Company Limited

Newfoundland,)
St. John's)
to Wit:)

I, Clarence H. Stirling of St. John's aforesaid, Registrar in Bankruptcy for the Bankruptcy District of the Province of Newfoundland, do hereby certify that the paper writing hereto annexed marked "A" and identified by my initials is a true and correct copy of the original Receiving Order, dated the 12th day ofMarch A.D., 1976, in the above mentioned matter.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and affixed the Seal of the Supreme Court of Newfoundland, at St. John's this 16th day of March A.D., 1976.



Registrar in Bankruptcy

Exhibit A "A" - 24

1976 No. 338

IN THE SUPREME COURT OF THE PROVINCE OF NEWFOUNDLAND

TRIAL DIVISION

(In Bankruptcy)

IN THE MATTER OF

The Bankruptcy Act
Chap. B-3, R.S.C. 1970

AND IN THE MATTER OF

Newfoundland Refining
Company Limited

RECEIVING ORDER

UPON the Petition of Atlantic Trading (Delaware) Corporation of the State of Delaware, one of the United States of America, a creditor, filed the 13th day of February, A.D. 1976, AND UPON HEARING Chalker, Q.C., of Counsel for Atlantic Trading (Delaware) Corporation AND UPON HEARING Aubrey Bonnell, of Counsel for Newfoundland Refining Company Limited

AND IT APPEARING to the Court that the following act of bankruptcy has been committed, namely: the said Newfoundland Refining Company Limited has, within the last six months next preceeding the filing of the petition for a receiving order, ceased to meet its liabilities generally as they became due.

(1) IT IS ORDERED that the said Newfoundland Refining Company Limited, a company incorporated under the laws of the Province of Newfoundland, Canada, and having its registered office at 85 Elizabeth Avenue, in St. John's, in the said Province of Newfoundland, be and is hereby adjudged bankrupt and a receiving order is hereby made against the said Newfoundland Refining Company Limited.

(2) IT IS FURTHER ORDERED that The Clarkson Company Limited of the said City of St. John's, be and is hereby appointed trustee of the estate of the said bankrupt.

Dated March 12th, 1976

(3) AND IT IS FURTHER ORDERED that the costs of and incidental to this petition and order be paid the petitioner out of the assets of the estate upon taxation thereof.

DATED at St. John's this 12th day of March A.D., 1976.

CHIEF JUSTICE

Exhibit A

You, , being the of the within named bankrupt corporation, are required pursuant to section 118 (130) of the Bankruptcy Act to attend at the office of , the Official Receiver, at the Courthouse, Street, , on the day of , 1976, at the hour of o'clock in the noon, there to answer such questions with respect to the conduct of the aforesaid bankrupt, the causes of its bankruptcy and the dispostion of its property as may be put by the said Official Receiver, and take notice that if you fail to present yourself for examination the Court may by warrant cause you to be apprehended and brought up for examination and may order you to be committed to the common gaol for a term not exceeding three years.

OFFICIAL RECEIVER

The solicitor for the petitioning creditor is Chalker, Green and Rowe whose address is 5th Floor, Royal Trust Building, Water Street, St. John's, Newfoundland.

EXHIBIT B

CANADA)
PROVINCE OF NEWFOUNDLAND)
CITY OF ST. JOHN'S) ss:
CONSULATE GENERAL OF THE)
UNITED STATES OF AMERICA)

I, Alan F. Dahl, Vice Consul of the United States of America at St. John's, Newfoundland, Canada, duly commissioned and qualified, do hereby certify that Clarence H. Stirling, whose true signature and official seal are respectively subscribed and affixed to the annexed document was on the 16th day of March 1976, the date thereof, Registrar in Bankruptcy for the Province of Newfoundland, to whose official acts faith and credit are due.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of the Consulate General of the United States of America at St. John's, Newfoundland, Canada this 18th day of March 1976.

Alan F. Dahl
Vice Consul of the United States of America

Exhibit B

Exhibit B

1976 No. 337

IN THE SUPREME COURT OF NEWFOUNDLAND
TRIAL DIVISION

IN BANKRUPTCY

IN THE MATTER OF

The Bankruptcy Act
Chap. B-3, R.S.C. 1970

AND IN THE MATTER OF

Provincial Refining
Company Limited

Newfoundland,)
St. John's,)
to Wit:)

I, Clarence H. Stirling of St. John's aforesaid, Registrar in Bankruptcy for the Bankruptcy District of the Province of Newfoundland, do hereby certify that the paper writing hereto annexed marked "A" and identified by my initials is a true and correct copy of the original Receiving Order, dated the 12th day of March A.D., 1976, in the above mentioned matter.

IN TESTIMONY WHEREOF I have hereunto subscribed my name and affixed the Seal of the Supreme Court of Newfoundland, at St. John's this 16th day of March A.D., 1976.

Registrar in Bankruptcy

Exhibit B

29

1976 No. 337

IN THE SUPREME COURT OF THE PROVINCE OF NEWFOUNDLAND

TRIAL DIVISION

(In Bankruptcy)

IN THE MATTER OF

The Bankruptcy Act
Chap. B-3, R.S.C. 1970

AND IN THE MATTER OF

Provincial Refining
Company Limited

RECEIVING ORDER

UPON the Petition of Atlantic Trading (Delaware) Corporation of the State of Delaware, one of the United States of America, a creditor, filed the 13th day of February, A.D. 1976 AND UPON HEARING Chalker, Q.C., of Counsel for Atlantic Trading (Delaware) Corporation AND UPON HEARING Aubrey Bonnell, of Counsel for Provincial Refining Company Limited

AND IT APPEARING to the Court that the following act of bankruptcy has been committed, namely: the said Provincial Refining Company Limited has, within the last six months next preceeding the filing of the petition for a receiving order, ceased to meet its liabilities generally as they became due.

(1) IT IS ORDERED that the said Provincial Refining Company Limited, a company incorporated under the laws of the Province of Newfoundland, Canada, and having its registered office at 85 Elizabeth Avenue, in St. John's, in the said Province of Newfoundland, be and is hereby adjudged bankrupt and a receiving order is hereby made against the said Provincial Refining Company Limited.

(2) IT IS FURTHER ORDERED that The Clarkson Company Limited of the said City of St. John's, be and is hereby appointed trustee of the estate of the said bankrupt.

Dated March 12th/1976

Exhibit B

You, , being the of the within named bankrupt corporation, are required pursuant to section 118 (130) of the Bankruptcy Act to attend at the office of , the Official Receiver, at the Courthouse, Street, , on the day of , 1976, at the hour of o'clock in the noon, there to answer such questions with respect to the conduct of the aforesaid bankrupt, the causes of its bankruptcy and the dispostion of its property as may be put by the said Official Receiver, and take notice that if you fail to present yourself for examination the Court may by warrant cause you to be apprehended and brought up for examination and may order you to be committed to the common gaol for a term not exceeding three years.

OFFICIAL RECEIVER

The solicitor for the petitioning creditor is Chalker, Green and Rowe whose address is 5th Floor, Royal Trust Building, Water Street, St. John's, Newfoundland.

(3) AND IT IS FURTHER ORDERED that the costs of and incidental to this petition and order be paid the petitioner out of the assets of the estate upon taxation thereof.

DATED at St. John's this 12th day of March A.D., 1976.

CHIEF JUSTICE

EXHIBIT C

In the matter of the bankruptcy of Newfoundland Refining Company Limited

.....

NOTICE TO BANKRUPTS AND OFFICERS OF BANKRUPT CORPORATIONS

You are hereby notified of the duties imposed upon you by the Bankruptcy Act and certain other features of this Act that affect you in your capacity of a bankrupt (or, when the bankrupt is a limited company, an officer designated by Section 130 of the Bankruptcy Act). You are expected to study this document carefully, as a breach of your duty as hereunder set out would make you liable to prosecution.

(1) Section 129 The bankrupt shall

(a) make discovery of and deliver all his property that is under his possession or control to the trustee or to any person authorized by the trustee to take possession of it or any part thereof;

(b) deliver to the trustee all books, records, documents, writings and papers including, without restricting the generality of the foregoing, title papers, insurance policies and tax records andreturns and copies thereof in any way relating to his property or affairs;

(c) at such time and place as may be fixed by the official receiver attend before the official receiver or before any other official receiver delegated by the official receiver for examination under oath as to his conduct, the causes of his bankruptcy and the disposition of his property;

(d) within seven days following his bankruptcy, unless the time is extended by the official receiver, prepare and submit to the trustee in quadruplicate a statement of his affairs in the prescribed form verified by affidavit and showing the particulars of his assets and liabilities, the names and addresses of his creditors, the securities held by them respectively, the dates when the securities were respectively given and such further or other information as may be required, but where the affairs of the bankrupt are so involved or complicated that he cannot himself reasonably prepare a proper statement of his affairs, the official receiver may, as an expense of the administration, authorize the employment of some qualified person to assist in the preparation of the statement;

(e) make or give all the assistance within his power to the trustee in making an inventory of his assets;

(f) make disclosure to the trustee of all property disposed of within one year preceding his bankruptcy, or for such further antecedent period as the court may direct, and how and to whom and for what consideration any part thereof was disposed of except such part as had been disposed of in the ordinary manner of trade or used for reasonable personal expenses;

(g) make disclosure to the trustee of all property disposed of by gift or settlement without adequate valuable consideration within five years preceding his bankruptcy;

(h) attend the first meeting of his creditors unless prevented by sickness or other sufficient cause and submit thereat to examination;

(i) when required, attend other meetings of his creditors or of the inspectors, or attend upon the trustee;

(j) submit to such other examinations under oath with respect to his property or affairs as required;

(k) aid to the utmost of his power in the realization of his property and the distribution of the proceeds among his creditors;

(l) execute such powers of attorney, conveyances, deeds and instruments as may be required;

(m) examine the correctness of all proofs of claims filed, if required by the trustee;

(n) in case any person has to his knowledge filed a false claim, disclose the fact immediately to the trustee;

Exhibit C

(o) generally to do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors as may be reasonably required by the trustee, or may be prescribed by General Rules or may be directedby the Court by any special order made with reference to any particular case or made on the occasion of any special application by the trustee, or any creditor or person interested; and

(p) until his application for discharge has been disposed of and the administration of the estate completed, keep the trustee advised at all times of his place of residence or address.

(2) Section 130

Where the bankrupt is a corporation, the officer executing the assignment, or such other officer or officers as the official receiver may direct, shall attend before the official receiver for examination and shall perform all the duties imposed upon a bankrupt by section 129 and, in case of failure to do so, such officer or officers are punishable as if he or they were the bankrupt.

(3) Section 47

The property of a bankrupt divisible amongst his creditors shall not comprise

(a) property held by the bankrupt in trust for any other person,

(b) any property that as against the bankrupt is exempt from execution or seizure under the laws of the province within which the property is situate and within which the bankrupt resides,

but it shall comprise

(c) all property wherever situate of the bankrupt at the date of his bankruptcy or that may be acquired by or devolve on him before his discharge, and

(d) such powers in or over or in respect of theproperty as might have been exercised by the bankrupt for his own benefit.

(4) Section 146

(1) Where an order is granted on terms or conditions or on the bankrupt consenting to judgment, the bankrupt shall, until such terms, conditions or judgment are satisfied, give the trustee such information as he may require with respect to his earnings and after-acquired property and income and, not less than once a year, file in the court and with the trustee a statement verified under oath showing the particulars of any property or income he may have acquired subsequent to the order for his discharge, and the trustee or any creditor may require the bankrupt to attend for examination under oath with reference to the facts contained in the statement, or as to his earnings, income, after-acquired property or dealings.

(2) Where the bankrupt fails to give information or to file a statement as required by subsection (1), or to attend for examination when required so to do, or to answer all questions fully and accurately with respect to his earnings, income, after-acquired property or dealings, the court may on the application of the trustee or of any creditor revoke the order of discharge.

(3) Where a conditional order of discharge of a bankrupt is made providing for payment of a further dividend or sum of money by the bankrupt all payments on account thereof shall be made to the trustee for distribution to the creditors.

(5) Section 148

(1) An order of discharge does not release the bankrupt from

(a) any fine or penalty imposed by a court or any debt arising out of a recognizance or bail bond;

(b) any debt or liability for alimony;

(c) any debt or liability under a maintenance or affiliation order or under an agreement for maintenance and support of a spouse or child living apart from the bankrupt;

(d) any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity;

(e) any debt or liability for obtaining property by false pretences or fraudulent misrepresentation;

(f) liability for the dividend that a creditor would have been entitled to receive on any provable claim not disclosed to the trustee, unless such creditor had notice or knowledge of the bankruptcy and failed to take reasonable action to prove his claim; or

(g) any debt or liability for goods supplied as necessaries of life and the court may make such order for payment thereof as it deems just or expedient.

(2) An order of discharge releases the bankrupt from all other claims provable in bankruptcy.

(6) Section 152

(1) The order of discharge or annulment shall be dated on the day on which it is made, but it shall not be issued or be delivered out until the expiration of the time allowed for an appeal, and, if an appeal be entered, not until the appeal has been finally disposed of.

(2) Notice of an order of discharge or annulment shall be published in the Canada Gazette by the bankrupt, but the order, when it has been issued or delivered out, shall be effective as from the date it bears.

(7) Section 169 Bankruptcy Offences

Any bankrupt who

(a) fails, without reasonable cause to do any of the things required of him under section 129;

(b) makes any fraudulent disposition of his property before or after bankruptcy;

(c) refuses or neglects to answer fully and truthfully all proper questions put to him at any examination held pursuant to this Act;

(d) makes a false entry or knowingly makes a material omission in a statement or accounting;

(e) after or within twelve months next preceding his bankruptcy conceals, destroys, mutilates, falsifies, makes an omission in or disposes of or is privy to the concealment, destruction, mutilation, falsification, omission from or disposition of a book or document affecting or relating to his property or affairs unless he proves that he had no intent to conceal the state of his affairs;

(f) after or within twelve months next preceding his bankruptcy obtains any credit or any property by false representations made by him or made by some other person to his knowledge;

(g) after or within twelve months next preceding his bankruptcy fraudulently conceals or removes any property of a value of fifty dollars or more or any debt due to or from him; or

(h) after or within twelve months next preceding his bankruptcy pawns, pledges or disposes of any property which he has obtained on credit and has not paid for, unless in the case of a trader such pawning, pledging or disposing is in the ordinary way of trade and unless in any case he proves that he had no intent to defraud;

is guilty of an offence and is liable on summary conviction to imprisonment for a term not exceeding one year or on conviction under indictment to imprisonment for a term not exceeding three years, and the provisions of the Criminal Code authorizing the imposition of a fine in addition to or in lieu of imprisonment do not apply.

(8) Section 170

An undischarged bankrupt who

(a) engages in any trade or business without disclosing to all persons with whom he enters into any business transaction that he is an undischarged bankrupt; or

(b) obtains credit for a purpose other than the supply of necessaries for himself and family to the extent of five hundred dollars or more from any person without informing that person that he is an undischarged bankrupt;

is guilty of an offence and is liable on summary conviction to imprisonment for a term not exceeding one year.

(9) Section 171

(1) Any person becoming bankrupt or making a proposal who has on any previous occasion been bankrupt or made a proposal to his creditors is guilty of an offence and is liable on summary conviction to a fine of one thousand dollars and to one year's imprisonment if

(a) being engaged in any trade or business, at any time during the two years immediately preceding his bankruptcy, has not kept and preserved proper books of account, or

(b) after or within the two year period mentioned in paragraph (a) he conceals, destroys, mutilates, falsifies or disposes of, or is privy to the concealment, destruction, mutilation, falsification or disposition of any book or document affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs.

(2) For the purposes of this section, a debtor shall be deemed not to have kept proper books of account if he has not kept such books or accounts as are necessary to exhibit or explain his transactions and financial position in his trade or business, including a book or books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, also accounts of all goods sold and purchased, and statements of annual and other stocktakings.

(10) You are also notified that, under the Canada Corporations Act and the Companies Acts of the various Provinces, you may not be the Director of a limited company while an undischarged bankrupt.

The Clarkson Company Limited

(Signed) [signature]

Trustee

ACKNOWLEDGMENT

I, [signature], the bankrupt referred to in this notice (or, an officer designated by Section 130 of the Bankruptcy Act of the corporation referred to in this notice) hereby acknowledge receipt of the above document and state that the contents have been adequately explained to me.

Dated at St. John's in the Province of Newfoundland this 19 day of March A.D. 19 75

[signature]
Witness

[signature]
Bankrupt (or Officer)

Pursuant to Rule 64 of the Bankruptcy Rules made under The Bankruptcy Act, I, ... herewith authorize and instruct The Clarkson Company Limited, Trustee to dispose of such books, records and documents of the bankrupt that are in the possession of the Trustee.

Witness

Bankrupt (or Officer)

EXHIBIT D

In the matter of the bankruptcy of Provincial Refining Company Limited....

.....

NOTICE TO BANKRUPTS AND OFFICERS OF BANKRUPT CORPORATIONS

You are hereby notified of the duties imposed upon you by the Bankruptcy Act and certain other features of this Act that affect you in your capacity of a bankrupt (or, when the bankrupt is a limited company, an officer designated by Section 150 of the Bankruptcy Act). You are expected to study this document carefully, as a breach of your duty as hereunder set out would make you liable to prosecution.

(1) Section 129 The bankrupt shall

(a) make discovery of and deliver all his property that is under his possession or control to the trustee or to any person authorized by the trustee to take possession of it or any part thereof;

(b) deliver to the trustee all books, records, documents, writings and papers including, without restricting the generality of the foregoing, title papers, insurance policies and tax records andreturns and copies thereof in any way relating to his property or affairs;

(c) at such time and place as may be fixed by the official receiver attend before the official receiver or before any other official receiver delegated by the official receiver for examination under oath as to his conduct, the causes of his bankruptcy and the disposition of his property;

(d) within seven days following his bankruptcy, unless the time is extended by the official receiver, prepare and submit to the trustee in quadruplicate a statement of his affairs in the prescribed form verified by affidavit and showing the particulars of his assets and liabilities, the names and addresses of his creditors, the securities held by them respectively, the dates when the securities were respectivuly given and such further or other information as may be required, but where the affairs of the bankrupt are so involved or complicated that he cannot himself reasonably prepare a proper statement of his affairs, the official receiver may, as an expense of the administration, authorize the employment of some qualified person to assist in the preparation of the statement;

(e) make or give all the assistance within his power to the trustee in making an inventory of his assets;

(f) make disclosure to the trustee of all property disposed of within one year preceding his bankruptcy, or for such further antecedent period as the court may direct, and how and to whom and for what consideration any part thereof was disposed of except such part as had been disposed of in the ordinary manner of trade or used for reasonable personal expenses;

(g) make disclosure to the trustee of all property disposed of by gift or settlement without adequate valuable consideration within five years preceding his bankruptcy;

(h) attend the first meeting of his creditors unless prevented by sickness or other sufficient cause and submit thereat to examination;

(i) when required, attend other meetings of his creditors or of the inspectors, or attend upon the trustee;

(j) submit to such other examinations under oath with respect to his property or affairs as required;

(k) aid to the utmost of his power in the realization of his property and the distribution of the proceeds among his creditors;

(l) execute such powers of attorney, conveyances, deeds and instruments as may be required;

(m) examine the correctness of all proofs of claims filed, if required by the trustee;

(n) in case any person has to his knowledge filed a false claim, disclose the fact immediately to the trustee;

Exhibit D

(o) generally to do all such acts and things in relation to his property and the distribution of the proceeds amongst his creditors as may be reasonably required by the trustee, or may be prescribed by General Rules, or may be directedby the Court by any special order made with reference to any particular case or made on the occasion of any special application by the trustee, or any creditor or person interested; and

(p) until his application for discharge has been disposed of and the administration of the estate completed, keep the trustee advised at all times of his place of residence or address.

(2) Section 130

Where the bankrupt is a corporation, the officer executing the assignment, or such other officer or officers as the official receiver may direct, shall attend before the official receiver for examination and shall perform all the duties imposedupon a bankrupt by section 129, and, in case of failure to do so, such officer or officers are punishable as if he or they were the bankrupt.

(3) Section 47

The property of a bankrupt divisible amongst his creditors shall not comprise

(a) property held by the bankrupt in trust for any other person,

(b) any property that as against the bankrupt is exempt from execution or seizure under the laws of the province within which the property is situate and within which the bankrupt resides,

but it shall comprise

(c) all property wherever situate of the bankrupt at the date of his bankruptcy or that may be acquired by or devolve on him before his discharge, and

(d) such powers in or over or in respect of theproperty as might have been exercised by the bankrupt for his own benefit.

(4) Section 146

(1) Where an order is granted on terms or conditions or on the bankrupt consenting to judgment, the bankrupt shall, until such terms, conditions or judgment are satisfied, give the trustee such information as he may require with respect to his earnings and after-acquired property and income and, not less than once a year, file in the court and with the trustee a statement verified under oath showing the particulars of any property or income he may have acquired subsequent to the order for his discharge, and the trustee or any creditor may require the bankrupt to attend for examination under oath with reference to the facts contained in the statement, or as to his earnings, income, after-acquired property or dealings.

(2) Where the bankrupt fails to give information or to file a statement as required by subsection (1), or to attend for examination when required so to do, or to answer all questions fully and accurately with respect to his earnings, income, after-acquired property or dealings, the court may on the application of the trustee or of any creditor revoke the order of discharge.

(3) Where a conditional order of discharge of a bankrupt is made providing for payment of a further dividend or sum of money by the bankrupt all payments on account thereof shall be made to the trustee for distribution to the creditors.

(5) Section 148

(1) An order of discharge does not release the bankrupt from

a) any fine or penalty imposed by a court or any debt arising out of a recognizance or bail bond;

b) any debt or liability for alimony;

(c) any debt or liability under a maintenance or affiliation order or under an agreement for maintenance and support of a spouse or child living apart from the bankrupt;

(d) any debt or liability arising out of fraud, embezzlement, misappropriation or defalcation while acting in a fiduciary capacity;

(e) any debt or liability for obtaining property by false pretences or fraudulent misrepresentation;

(f) liability for the dividend that a creditor would have been entitled to receive on any provable claim not disclosed to the trustee, unless such creditor had notice or knowledge of the bankruptcy and failed to take reasonable action to prove his claim; or

(g) any debt or liability for goods supplied as necessaries of life and the court may make such order for payment thereof as it deems just or expedient.

(2) An order of discharge releases the bankrupt from all other claims provable in bankruptcy.

(6) Section 152

(1) The order of discharge or annulment shall be dated on the day on which it is made, but it shall not be issued or be delivered out until the expiration of the time allowed for an appeal, and, if an appeal be entered, not until the appeal has been finally disposed of.

(2) Notice of an order of discharge or annulment shall be published in the Canada Gazette by the bankrupt, but the order, when it has been issued or delivered out, shall be effective as from the date it bears.

(7) Section 169 Bankruptcy Offences

Any bankrupt who

(a) fails, without reasonable cause to do any of the things required of him under section 129;

(b) makes any fraudulent disposition of his property before or after bankruptcy;

(c) refuses or neglects to answer fully and truthfully all proper questions put to him at any examination held pursuant to this Act;

(d) makes a false entry or knowingly makes a material omission in a statement or accounting;

(e) after or within twelve months next preceding his bankruptcy conceals, destroys, mutilates, falsifies, makes an omission in or disposes of or is privy to the concealment, destruction, mutilation, falsification, omission from or disposition of a book or document affecting or relating to his property or affairs unless he proves that he had no intent to conceal the state of his affairs;

(f) after or within twelve months next preceding his bankruptcy obtains any credit or any property by false representations made by him or made by some other person to his knowledge;

(g) after or within twelve months next preceding his bankruptcy fraudulently conceals or removes any property of a value of fifty dollars or more or any debt due to or from him; or

(h) after or within twelve months next preceding his bankruptcy pawns, pledges or disposes of any property which he has obtained on credit and has not paid for, unless in the case of a trader such pawning, pledging or disposing is in the ordinary way of trade and unless in any case he proves that he had no intent to defraud;

is guilty of an offence and is liable on summary conviction to imprisonment for a term not exceeding one year or on conviction under indictment to imprisonment for a term not exceeding three years, and the provisions of the Criminal Code authorizing the imposition of a fine in addition to or in lieu of imprisonment do not apply.

(8) Section 170

An undischarged bankrupt who

(a) engages in any trade or business without disclosing to all persons with whom he enters into any business transaction that he is an undischarged bankrupt; or

39

(b) obtains credit for a purpose other than the supply of necessaries for himself and family to the extent of five hundred dollars or more from any person without informing that person that he is an undischarged bankrupt;

is guilty of an offence and is liable on summary conviction to imprisonment for a term not exceeding one year.

(9). Section 171

(1) Any person becoming bankrupt or making a proposal who has on any previous occasion been bankrupt or made a proposal to his creditors is guilty of an offence and is liable on summary conviction to a fine of one thousand dollars and to one year's imprisonment if

(a) being engaged in any trade or business, at any time during the two years immediately preceding his bankruptcy, has not kept and preserved proper books of account, or

(b) after or within the two year period mentioned in paragraph (a) he conceals, destroys, mutilates, falsifies or disposes of, or is privy to the concealment, destruction, mutilation, falsification or disposition of any book or document affecting or relating to his property or affairs, unless he proves that he had no intent to conceal the state of his affairs.

(2) For the purposes of this section, a debtor shall be deemed not to have kept proper books of account if he has not kept such books or accounts as are necessary to exhibit or explain his transactions and financial position in his trade or business, including a book or books containing entries from day to day in sufficient detail of all cash received and cash paid, and, where the trade or business has involved dealings in goods, also accounts of all goods sold and purchased, and statements of annual and other stocktakings.

(10) You are also notified that, under the Canada Corporations Act and the Companies Acts of the various Provinces, you may not be the Director of a limited company while an undischarged bankrupt.

(Signed) The Clarkson Company Limited
Trustee

I, [illegible], the bankrupt referred to in this notice (or, an officer designated by Section 130 of the Bankruptcy Act of the corporation referred to in this notice) hereby acknowledge receipt of the above document and state that the contents have been adequately explained to me.

Dated at St. John's in the Province of Newfoundland this 17 day of March A.D. 19 75

S B Gallagher
Witness

[illegible]
Bankrupt (or Officer)

Pursuant to Rule 64 of the Bankruptcy Rules made under The Bankruptcy Act,

I, ... herewith authorize and instruct The Clarkson Company Limited, Trustee to dispose of such books, records and documents of the bankrupt that are in the possession of the Trustee.

Witness

Bankrupt (or Officer)

EXHIBIT F

NEWFOUNDLAND REFINING COMPANY LIMITED

ESTIMATED STATEMENT OF AFFAIRS

AS AT NOVEMBER 30, 1975

(PREPARED WITHOUT VERIFICATION FROM INFORMATION SUPPLIED BY THE DEBTOR)

(000'S OMITTED)

ASSETS

Current			
Cash		$ 42	
Accounts receivable - Court line		150	
Accounts receivable - other		35	
Prepaids		849	$ 1,076
Due from associated companies:			
Shaheen Natural Resources Company Inc. (Schedule A)		45,504	
Provincial Refining Company Limited			
Current account	$ 2,840		
9% subordinated debentures	12,028	14,868	
J.M. Shaheen (Schedule B)		501	
Founders Corporation (Schedule C)		548	
Shaheen Natural Resources Company Limited		265	
SNR Dover Incorporated		200	
Canadian Caribbean Oil Company Limited (Schedule D)		609	
Newfoundland Pulp & Chemical Co. Ltd. (Schedule E)		2,157	64,652
Investment in subsidiaries			
SNR Dover Incorporated		1	
Provincial Holding Company Limited		2	
Provincial Building Company Limited		3	6
Fixed assets:			
Land	2		
Furniture and equipment - housing	35		
Office furniture and equipment	24		
Housing development	2,861		
Office building	264	3,186	
Less accumulated depreciation		16	3,170
Deferred charges			6,123
			$75,027

LIABILITIES

Current			
Accounts payable-marine and other		10,385	
Withholding tax payable and employees deductions at source		404	10,789
Due to associated companies			
Newfoundland Refining Company Limited USA		9,043	
SNR DeLaware Inc.		6,430	15,473
Long-term debt			
Notes payable - Atlas America Inc. (including accrued interest)		47,206	
Notes payable - Cotaas Larsen		8,991	
Loans payable - Court line		3,286	
Central Nova Scotia Bank & Trust (principal and interest)		1,319	60,802
Apparent deficit			(12,037)
			$75,027

Exhibit F

Exhibit F

NEWFOUNDLAND REFINING COMPANY LIMITED

Account Analyses as at November 30, 1975

(000's omitted)

Advances to Shaheen Natural Resources Company Inc.

	1973	1974	1975	TOTAL
(1)Opening Balance - January 1.	$ 1,065	$17,581	$35,658	$1,065
Wire Transfers to S.N.R.	12,738	13,100	586	26,424
Cheques to S.N.R.	8,478	8,335	5,645	22,458
(2)Miscellaneous cheques payments	519	15	14	548
(3)Journal Entries	4,515	5,968	7,260	17,743
Cheques and Wire Transfers from SNR	(9,681)	(9,571)	(3,480)	(22,732)
Other Items	(53)	230	(179)	(2)
Ending Balance	$17,581	$35,658	$45,504	$45,504

NOTE:

1. Documentation supporting opening January 1, 1973 not examined.
2. Represents miscellaneous payments made by NRC for the account of SNR.
3. Represents such items as:
   (a) interest on intercompany account
   (b) distribution error corrections.

SCHEDULE B

Advances to John M. Shaheen

(000's omitted)

	Opening Balance	Cash Payments	Other Charges and Credits	Closing Balance
1972		$ 201		
1973		130		$ 311
1974	$311	53	$ 89	453
1975 to November 30th	453	2	46	501
		$ 386	$135	

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(000's omitted)

	Cash Payments	Other Charges	Total
1972	$ 171		$ 171
1973	45		45
1974	4	$ 121	125
1975 to November 30.		50	50
	$ 220	$ 171	$ 391
Amounts not yet analysed			157
Balance November 30, 1975			$ 548

SCHEDULE D

Advances to - Canadian Caribbean Oil Co. Ltd.

(000's omitted)

	Opening Balance	Cash Payments	Other Charges	Closing Balance
January 5, 1973	-	$ 10	-	$ 10
1974	$ 10	-	$ 3	13
1975	13	540	56	609
Total Cash Payments		$550	$ 59	

AS AT NOVEMBER 30, 1975

(PREPARED WITHOUT VERIFICATION FROM INFORMATION SUPPLIED BY THE DEBTOR)

(000'S OMITTED)

ASSETS

Current			
Cash	$	$ 6,920	
Certificate of deposit (The First National Bank of Chicago - pledged to secure letters of credit for crude oil purchases)		3,039	
Accounts receivable		7,740	
Inventories:			
Crude oil	9,694		
Refined products	26,684		
Materials and supplies	3,551	39,929	
Prepaid expenses		21,628	$ 79,256
Property, plant and equipment			
Refining facilities	213,477		
Marine facilities	25,269	238,746	
Less allowance for depreciation		16,373	222,373
Deferred pre-operating costs			14,339
Due from associated companies:			
SNR Holdings Inc. (US - $260) (Schedule A)		263	
SNR Dover Inc. (US - $648) (Schedule B)		655	
Newfoundland Refining Company Limited USA (US $9,401) (Schedule C)		9,506	
Shaheen Natural Resources Company Limited (US - $22)		22	10,446
			$326,414

LIABILITIES

Current			
Current maturities in long-term debt (Schedule E)		$ 18,376	
Notes payable - re Ataka		18,233	
Crude oil purchases re Ataka		236,031	
Accounts payable:			
Trade		26,674	
Refinery contractor		12,033	
Accrued expenses		21,451	332,798
Long-term debt (Schedule E)			148,484
Due to associated companies:			
Newfoundland Refining Company Limited			
Accounts payable (US - $140)	152		
Interest payable (US - $2,700)	2,730		
9% subordinated debt	12,028	14,910	
SNR Delaware Inc. (US - $14,424)(Schedule D)		14,584	29,494
Apparent deficit			(184,362)
			$326,414

Advances to Newfoundland Pulp and Chemical Co. Ltd.

(000's omitted)

Partial Analysis of the Account:

- Interest income accrued and recorded by journal entry between June 30, 1974 and November 30, 1975	$ 706
- Transfer of opening balance	(463)
- Cash transfers - cheques issued between August 1, 1968 and December 29, 1972 -	507
- Amount not yet analysed	1,407
Total at November 30, 1975	$2,157

PROVINCIAL REFINING COMPANY LIMITED

ACCOUNT ANALYSES AS AT NOVEMBER 30, 1975
(000's)

ADVANCES TO S.N.R. HOLDINGS INC.

	Opening Balance	Cash Payments	Cash Receipts	Closing Balance
January 1 to November 30, 1975	-	$260	-	$260

Schedule B

ADVANCES TO S.N.R. DOVER INCORPORATED
(000's)

	Cash Payments	Other Charges	Total
1974 - Various items	$150	$129	$279
1975 - Various items	255	161	416
- Interest rate differential	—	(47)	(47)
Balance - November 30, 1975	$405	$243	$648

NOTES:

The amounts $129,000 and $161,000 shown as "Other charges" above represent charges for 15% withholding tax on gross interest payments made by Provincial Refining Company Limited directly to First National Bank of Chicago, to B.P. Trading and to Newfoundland Refining Company Limited USA.

PROVINCIAL REFINING COMPANY LIMITED

ACCOUNT ANALYSES AS AT NOVEMBER 30, 1975
(000's)

Advances to Newfoundland Refining Company Limited U.S.A.:

1)	Accounts receivable re product sales	$14,231
2)	Account receivable (re Sabena/Canadian Fuel Marketers)	185
3)	Payments received	(5,015)
	Total	$ 9,401

1) Account Receivable - Newfoundland Refining Co., Ltd. - U.S.A.

	Opening Balance	Sales to NRCL-USA	Cash Receipts	Closing Balance
1974	-	$ 1,326	-	$ 1,326
1975 to November 30th	$1,326	12,905	-	14,231
Total Sales		$14,231		

2) Accounts Receivable - NFCL - U.S.A. (Re: Sabena/CFM)

Balance November 30, 1975	$ 185

Note:

Various charges between December 1973 and January 1975 relating to sales made to Sabena - no further analysis carried out on this account.

3) Payments received

Balance, January 1, 1974	$ -
1974 - Cash receipts	590
1975 - Cash receipts	4,425
Balance at November 30, 1975	$5,015

PROVINCIAL REFINING COMPANY LIMITED

ACCOUNT ANALYSES AS AT NOVEMBER 30, 1975
(000's)

ACCOUNT PAYABLE TO S N R DELAWARE INC.

	Opening Balance	Commission Accrual	Cash Payments	Closing Balance
December 31, 1973				$ 10
1974	$ 10	$11,384	$5,448	5,946
1975 to November 30th	5,946	9,392	914	14,424
Totals		$20,776	$6,362	

NOTES:

1. Commissions at 5.1% on refinery sales net of charter hire, port charges and bunker fuel.

2. The original sales agreement was between Provincial Refining Company Limited and Newfoundland Refining Company Limited

3. In September 1969, Newfoundland Refining Company Limited assigned this agreement to SNR Delaware Inc. apparently in consideration for services performed by SNR in the development of the refinery and for subscription to approximately $10 million of Newfoundland Refining Company Limited stock.

N.B. No agreement covering the assignment of Newfoundland Refining Company Limited 's right to receive the commission has been located.

Schedule E

LONG-TERM DEBT

AS AT NOVEMBER 30, 1975
(000's)

Kleinwort Benson Ltd. - Sterling	$ 61,840
Kleinwort Benson Ltd. - First Eurodollar	9,215
Kleinwort Benson Ltd. - Second Eurodollar	6,048
Province of Newfoundland - Second mortgage	41,035
Government of Canada - Department of Public Works	23,295
SNR Dover Inc. re: Ataka	15,256
SNR Dover Inc. re: First National Bank of Chicago	10,171
	166,860
Less current portions	18,376
Total	$148,484

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

In Re	:
PROVINCIAL REFINDING COMPANY LIMITED	:
and	:
NEWFOUNDLAND REFINING COMPANY, LIMITED,	:
Bankrupts.	:
THE CLARKSON COMPANY LIMITED, as Trustee in Bankruptcy, appointed by the Supreme Court of the Province of Newfoundland, of the property of Newfoundland Refining Company Limited and Provincial Refining Company Limited,	:
Plaintiff,	:
-against-	:
JOHN M. SHAHEEN, ROY M. FURMARK, ALBIN W. SMITH, PHILIP GANDERT, PETER L. CARAS, PAUL W. RISHELL, WILLIAM J. SHERIDAN, and JOHN DOE,	:
Defendants.	:

76 CN. 1373 (R.O.)

MEMORANDUM OF THE CLARKSON COMPANY LIMITED AS TRUSTEE IN BANKRUPTCY OF NEWFOUNDLAND REFINING COMPANY LIMITED AND PROVINCIAL REFINING COMPANY LIMITED

WHITE & CASE
14 WALL STREET
NEW YORK, N.Y. 10005

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- X

In Re :

PROVINCIAL REFINING COMPANY LIMITED :

and :

NEWFOUNDLAND REFINING COMPANY, LIMITED, :

Bankrupts. :

- X

THE CLARKSON COMPANY LIMITED, as Trustee in Bankruptcy, appointed by the Supreme Court of the Province of Newfoundland, of the property of Newfoundland Refining Company Limited and Provincial Refining Company Limited, : 76 Civ. 1373 (R.D.)

Plaintiff, :

-against- :

JOHN M. SHAHEEN, ROY M. FURMARK, ALBIN W. SMITH, PHILIP GANDERT, PETER L. CARAS, PAUL W. RISHELL, WILLIAM J. SHERIDAN and JOHN DOE, :

Defendants. :

- X

MEMORANDUM IN SUPPORT OF THE MOTION OF THE CLARKSON COMPANY LIMITED AS TRUSTEE IN BANKRUPTCY FOR A PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

This memorandum is submitted in support of the motion of The Clarkson Company Limited ("Clarkson"), as Trustee in Bankruptcy, for a preliminary injunction and temporary restraining order directing the defendants to surrender possession of the books and records of Newfoundland Refining Company Limited ("NRC") and Provincial Refining Company Limited ("PRC") located in the State of New York.

PRELIMINARY STATEMENT

The Complaint in this action seeks the assistance of this Court in the enforcement of the title to property of the bankrupts located in New York which vested in Clarkson by reason of the issuance of Receiving Orders by the Supreme Court of the Province of Newfoundland, Canada on March 12, 1976. These Receiving Orders, made in connection with bankruptcy proceedings against NRC and PRC, both Newfoundland corporations, declared NRC and PRC to be bankrupt and appointed Clarkson as trustee of the estates of the bankrupts. Upon the issuance of said orders, title to all of NRC's and

PRC's property immediately vested in Clarkson and Clarkson became obligated to take possession of all such property wherever situated, including, but not limited to all books, accounts and records, as quickly as possible.

The principal books and records of NRC and PRC are located in New York. Defendants have denied plaintiff the right to examine and take control of any financial records of the two companies, thus making plaintiff's discharge of its obligations and responsibilities as Trustee in Bankruptcy impossible.

Consequently, plaintiff seeks from this Court a temporary restraining order (a) restraining defendants from transferring, destroying, altering or secreting any of the books and records of PRC or NRC; (b) requiring defendants to grant it immediate control of all books and records of NRC and PRC; and (c) restraining defendants from disbursing, removing or secreting any other property of NRC or PRC in their custody or control.

Plaintiff further seeks a preliminary injunction requiring defendants immediately to deliver into plaintiff's possession that property of NRC and PRC located in the State of New York, including, but not limited to, all books, records and bank accounts of NRC and PRC.

The need for this relief is urgent. The Canadian bankruptcy proceedings established that PRC and NRC owed hundreds of millions of dollars and were hopelessly insolvent. Among the creditors are the Province of Newfoundland and the government of the United Kingdom. PRC and NRC are part of a complex web of companies controlled by John Shaheen. Examination of the books of PRC and NRC have established that millions of dollars were sent by PRC and NRC to Shaheen controlled companies, in transactions yet unexplained and at times when NRC and PRC were, if not yet insolvent, incurring losses in the tens of millions of dollars.

ARGUMENT

I

THE CANADIAN JUDGMENT

Clarkson was appointed as Trustee in Bankruptcy for the estates of NRC and PRC by the Chief Justice of the Supreme Court of Newfoundland on March 12, 1976 after a full adversary hearing. The Bankruptcy Act (Canada), Can. Rev. Stat. c. B-3 (1970) (the "Canadian Bankruptcy Act") effects a transfer of title to property wherever situated from the bankrupt to the trustee in bankruptcy immediately upon the appointment of such a trustee and imposes certain duties and obligations on the trustee and upon the bankrupt itself.

A. The Property Of The Bankrupt Passes To And Vests In The Trustee Who May Act As Trustee Anywhere In Order To Obtain Possession Of And Realize The Property.

The Canadian Bankruptcy law provides:

"On a receiving order being made,...a bankrupt ceases to have any capacity to dispose of or otherwise deal with his property, which shall, subject to this Act, and subject to the rights of secured creditors, forthwith pass to and vest in the trustee named in the receiving order...." Canadian Bankruptcy Law §50(5).*

Property is defined as:

"'Property' includes money, goods, things in action, land, and every description of property, whether real or personal, movable or immovable, legal or equitable, and whether situated in Canada or elsewhere and includes obligations, easements and every description of estate, interest and profit, present or future, vested or contingent, in, arising out of, or incident to property;" (Emphasis added). Canadian Bankruptcy Act §2.*

These provisions of the Canadian Bankruptcy Act transfer title to all the property of NRC and PRC, including property located in the State of New York, from the bankrupts to Clarkson, as Trustee in Bankruptcy.

* For a similar provision in the Bankruptcy Act of the United States, see 11 U.S.C. §110(a) which provides that the trustee shall be "vested by operation of law with the title of the bankrupt" in "property wherever located."

Clarkson is empowered by the Canadian Bankruptcy Law to pursue the property of the bankrupts, NRC and PRC, wherever situated, in order to reduce it to possession. The Canadian Bankruptcy Law provides:

> "For the purpose of obtaining possession of and realizing upon the property of the bankrupt a trustee has power to act as such anywhere." Canadian Bankruptcy Law §12(6).*

The action taken by Clarkson in this Court is expressly sanctioned by this provision of the Canadian Bankruptcy Law. Indeed, it is Clarkson's duty to pursue the property of the bankrupts wherever located in order to collect the entire estate of the bankrupt for the benefit of creditors. This duty is of particular significance with regard to the books and records of the bankrupts which are located in New York without which Clarkson cannot perform its duties as Trustee in Bankruptcy.

B. A Trustee In Bankruptcy Must Examine The Books, Accounts And Records Of The Bankrupt And All Such Books, Accounts And Records Must Be Turned Over To It.

It is elementary that one appointed as a Trustee in Bankruptcy must immediately commence an examination of the

* The Bankruptcy Act of the United States specifically directs the bankrupt (or its officers if it is a corporation) to execute and deliver to the trustee transfers of all his property in foreign countries, 11 U.S.C. §25(a)(5), 11 U.S.C. §25(b).

books and records of the bankrupt in order to ascertain what property belongs to the bankrupt, where it is situated and what debts the bankrupt has. It is essential that the Trustee in Bankruptcy have access to all books, accounts and records wherever situated in order to properly fulfill its function. Accordingly, the trustee is given the power to enter any premises where such books, accounts and records are kept. The Canadian Bankruptcy Law expressly provides that:

> "The trustee shall, as soon as may be, take possession of the deeds, books, records and documents and all property of the bankrupt and make an inventory, and for the purpose of making an inventory the trustee is entitled to enter upon any premises on which the books, records, documents or property of the bankrupt may be, notwithstanding that they may be in the possession of a sheriff, a secured creditor, or other claimant thereto." Canadian Bankruptcy Law §12(2).*

No person is entitled to frustrate the equitable administration of a bankrupt estate by withholding possession of any books, accounts or records belonging to the bankrupt. The Canadian Bankruptcy Law specifically provides that:

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* For a similar provision in the Bankruptcy Act of the United States, see 11 U.S.C. §75(a)(1) which requires the trustees to "collect and reduce to money the property of the estates for which they are trustees."

> "No person is, as against the trustee, entitled to withhold possession of the books of account belonging to the bankrupt or any papers or documents relating to the accounts or to any trade dealings of the bankrupt or to set up any lien thereon." Canadian Bankruptcy Law §12(4).

It is clear that since no person may withhold such books, it is incumbent upon the defendants, who are directors and officers of the bankrupts, to turn over all books and records of NRC and PRC to Clarkson.

The bankrupts, NRC and PRC, are corporations organized and existing under the laws of the Province of Newfoundland and as such are governed by the laws of Canada. That law dictates that all property of NRC and PRC wherever situated, including but not limited to, books, records and bank accounts, be turned over to Clarkson which has been duly appointed as the Trustee in Bankruptcy. The failure of the defendants, directors and officers of the bankrupts, to do so is in direct violation of the Canadian law and thwarts Clarkson in its efforts to administrate the bankrupt estates equitably.

C. <u>The Special Need In This Case</u>.

The bankruptcy proceedings were bitterly contested by NRC and PRC. These corporations were controlled by the

"Shaheen interests", a tangled web of corporate holdings ultimately responsible to John Shaheen. The trustee's limited examination of the books and records of NRC and PRC indicates that at a time when PRC and NRC were losing millions of dollars and may have been insolvent, millions of dollars were paid to or loaned to other Shaheen companies in transactions thus far unexplained. It is obvious that the trustee needs access to all the books and accounts of PRC and NRC, and it is equally obvious that those formerly in control of NRC and PRC have reasons for seeking to keep the trustee from its required examination of the bankrupts records.

II

UNDER THE PRINCIPLES OF COMITY, THE CANADIAN TRUSTEE SHOULD BE ASSISTED BY THIS COURT IN PERFORMING ITS FUNCTIONS

The doctrine of comity was defined by the United States Supreme Court in Hilton v. Guyot, 159 U.S. 113 (1895), where it was said:

> "'Comity,' in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive

> or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws." Id. at 163-164.

The essence of the rule of comity is that a state "not discriminate between its own citizens and those of a foreign state." Oseas v. Sutton, 83 N.Y.S.2d 515, 519 (Sup. Ct. Kings Co.), aff'd, 274 App. Div. 99, 85 N.Y.S.2d 336 (2d Dep't 1948), quoting Mabon v. Ongley Electric Co., 156 N.Y. 196, 201, 50 N.E. 805, 806 (1898).

As discussed above, title to all of the property of NRC and PRC vested in Clarkson upon the issuance of the Receiving Order by the operation of the Canadian Bankruptcy Act. Relying on the principles of comity, courts of the State of New York have repeatedly acknowledged the principle that title to the property of the bankrupt which has devolved upon trustees or receivers by virtue of their appointment as trustees or receivers in foreign* bankruptcy

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* The term "foreign receiver" or "foreign trustee" as used herein refers to recivers or trustees appointed by the courts of both sister states and foreign countries. Typically the New York courts apply the same standards to the recognition of a receiver or trustee appointed by the court of a foreign country as they do to the recognition of a receiver or trustee appointed by the court of a sister state. Compare In re Waite, 99 N.Y. 433, 2 N.E. 440 (1885) with Union Guardian Trust Co. v. Broadway National Bank & Trust Co., 138 Misc. 16, 245 N.Y.S. 2 (Sup. Ct., N.Y.Co. 1930).

or insolvency proceedings will be recognized and enforced in New York. See, e.g., In re Cobham's Will, 81 N.Y.S.2d 356 (Sup. Ct., N.Y.Co. 1948) (English trustee); In re Waite, 99 N.Y. 433, 2 N.E. 440 (1885) (English trustee). The Supreme Court of the United States articulated the rule prevailing in New York in the following language:

> "The rule in that State is, that by the comity of nations, the statutory title of foreign assignees in bankruptcy is recognized and enforced when it can be done without injustice to the citizens of the State, and without prejudice to creditors pursuant to their remedies under the New York statutes, provided also that such title is not in conflict with the laws or public policy of the State, and that the foreign court had jurisdiction of the bankrupt." Cole v. Cunningham, 133 U.S. 107, 122-23 (1890) (citation omitted).

While "comity" has within it the elements of discretion, that discretion is limited. American courts cannot arbitrarily refuse to enforce a foreign right. As was stated by the New York Court of Appeals in Loucks v. Standard Oil Co., 224 N.Y. 99, 111, 120 N.E. 198, 202 (1918):

> "The courts are not free to refuse to enforce a foreign right at the pleasure of the judges, to suit the individual notion of expediency or fairness. They do not close their doors, unless help would violate some fundamental principle of justice, some prevalent conception of good morals, some deep-rooted tradition of the common weal." Quoted in Waxman v. Kealoha, 296 F.Supp. 1190, 1193 (D. Hawaii 1969).

The limited exceptions to "comity" include whether the foreign court had jurisdiction over the bankrupt. In re Waite, 99 N.Y. 433, 2 N.E. 440 (1885).* In the case at bar there can be no question but that NRC and PRC were subject to the jurisdiction of the courts in Canada since both were corporations created under and governed by the laws of that country. Similarly, courts have raised the question of whether the enforcement of the rights created by the appointment of a trustee or receiver in a foreign jurisdiction would violate the public policy of the State of New York in that it would deprive local creditors of their rights. However, even the existence of domestic creditors has not been considered a bar to granting relief to a foreign trustee. In re Stoddard, 242 N.Y. 148, 151 N.E. 159 (1926) (Norwegian receiver); Matter of People (City Equitable Insurance Co.), 238 N.Y. 147, 144 N.E. 484 (1924) (English liquidator); People v. Granite State Provident Ass'n, 161 N.Y. 492, 55 N.E. 1053 (1899) (New Hampshire trustee). In the case at bar no local creditors assert claims to the property of the bankrupts and no public policy of the State of

* No New York cases have been found in which the trustee was not granted the relief requested on the ground that the foreign court did not have jurisdiction over the bankrupt.

New York is contravened by Clarkson's application for relief in this Court. The facts of this case are similar to those presented to the court in In re Waite in which the court stated:

> "We have not a case here where there is a conflict between the foreign trustee and domestic creditors. So far as appears no injustice whatever will be done to any of our own citizens, or to anyone else, by allowing the transfer to have full effect here. Indeed justice seems to require that this money should be paid to the foreign trustee for distribution among the foreign creditor [sic.] of the bankrupts." 99 N.Y. at 439, 2 N.E. at 443.

We are aware of no case which concerned itself with any alleged right of local shareholders in the bankruptcy proceeding. And it is the American parents of the bankrupt Newfoundland corporations who have refused access to Clarkson.

Nor do we have here acts by a foreign court which offend the law of civilized nations. See Moscow Fire Ins. Co. v. Bank of New York & Trust Co., 280 N.Y. 286, 20 N.E.2d 758 (1939), aff'd by an equally divided court sub nom. United States v. Moscow Fire Ins. Co., 309 U.S. 624 (1940) (the court refused to enforce title acquired by means of the confiscatory exercise of governmental power). The foreign court here, a sister common-law state, conducted a full

adversary proceeding before issuing the bankruptcy order.

Thus, there is here no "exception" to the comity of nations. Employing the principles enunciated above the courts of New York have assisted foreign receivers and trustees in collecting the property of the bankrupt located within the state. See, e.g., In re Waite, 99 N.Y. 433, 2 N.E. 440 (1885); In re Stoddard, 242 N.Y. 148, 151 N.E. 159 (1926).

Canada, of course, is a sister common-law jurisdiction and its laws and procedures are akin to our own. (See analogy between Canadian Bankruptcy Act and United States Bankruptcy Act at pp. 4-8, supra). Trustees in bankruptcy appointed by its courts are recognized in this country, Waxman v. Kealoha, 296 F.Supp. 1190 (D. Hawaii 1969), and the judgments of its courts are given effect by the courts of New York. International Firearms Co. Ltd. v. Kingston Trust Co., 6 N.Y.2d 406, 160 N.E.2d 656, 189 N.Y.S. 2d 911 (1959).

It further should be noted that the Canadian courts will give a trustee appointed in the United States the relief requested in this action. In William v. Rice, 3 D.L.R. 225 (1926) a trustee of the bankrupt in the United States was allowed by the Canadian court to recover personal property of the bankrupt fraudulently transferred to a resident of Manitoba.

C. The Propriety of Injunctive Relief.

Foreign trustees have employed different remedies in asserting their title over property located in New York, including motion for execution, In re Cobham's Will, 81 N.Y.S. 2d 356 (Sup. Ct., N.Y.Co. 1948), and replevin Mabon v. Ongley Electric Co., 156 N.Y. 196, 200, 50 N.E. 805, 806 (1898). The remedy of injunction is the most appropriate in the case at bar since defendants must not only be ordered to turn over possession of all of NRC's and PRC's books and records located in New York to Clarkson, but must also be enjoined from removing, destroying, secreting or tampering with any such books and records. The use of the remedy of injunction by a foreign trustee to gain possession of property has been sanctioned by the courts of New York. See Union Guardian Trust Co. v. Broadway Nat. Bank & Trust Co., 138 Misc. 16, 245 N.Y.S. 2 (Sup. Ct., N.Y.Co. 1930) (Michigan receiver suing for injunction compelling officer of bankrupt to turn over sums of money he had withdrawn); see also Rinehart v. Hasco Bldg. Co., 153 App. Div. 153, 158, 138 N.Y.S. 258, 261 (1st Dep't 1912), aff'd, 214 N.Y. 635, 108 N.E. 1106 (1915) (in which the court stated that a receiver could sue to enjoin wrongful interference with his possession of property of the bankrupt).

This Court should assist Clarkson under the principles of comity in enforcing the title vested in it upon its appointment as Trustee in Bankruptcy by the Canadian court by issuing the temporary restraining order and the preliminary injunction requested herein.

III

PRELIMINARY RELIEF IS REQUIRED BY THE FACTS OF THIS CASE

Clarkson has established that its case is meritorious and that the balance of hardships is decidedly in its favor. Checker Motor Corp. v. Chrysler Corp., 405 F.2d 319 (2d Cir.), cert. denied, 394 U.S. 999 (1969); Dino DeLaurenti's Cinematografica S.p.A. v. D-150, Inc., 366 F.2d 373 (2d Cir. 1966).

Clarkson's right, as Trustee in Bankruptcy, to all the books and records of NRC and PRC is explicitly set forth in the Canadian Bankruptcy Act. Title to all of NRC's and PRC's property vested in Clarkson immediately upon its appointment as Trustee. Defendants are wrongfully withholding possession of the books and records located in New York from it.

Balancing the equities in the motion before the

Court is an easy matter. The harm to the trustee and to the creditors of NRC and PRC is great in that the denial of preliminary relief would hamstring the trustee in the performance of its obligations and subject the estate of the bankrupts to the possibility of further waste and destruction. Only the granting of the preliminary relief requested can insure the preservation of the bankrupt estates for the benefit of creditors. The harm to the defendants is non-existent: the corporations are adjudged bankrupts; defendants have no claim to the lawful custody of the books and records.

CONCLUSION

For the reasons stated herein and in the moving affidavit the temporary restraining order and the preliminary injunction requested herein should be granted.

Dated: New York, New York
March 22, 1976

Respectfully submitted,

WHITE & CASE
Attorneys for The Clarkson Company
Limited as Trustee in Bankruptcy
14 Wall Street
New York, New York 10005
(212) 732-1040

AFFIDAVIT OF RICHARD deY. MANNING
IN OPPOSITION TO TEMPORARY RESTRAINING ORDER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

In Re

PROVINCIAL REFINING COMPANY LIMITED
and
NEWFOUNDLAND REFINING COMPANY LIMITED,

Bankrupts.

----------:

THE CLARKSON COMPANY LIMITED, as Trustee in Bankruptcy, appointed by the Supreme Court of the Province of Newfoundland, of the property of Newfoundland Refining Company Limited and Provincial Refining Company Limited,

[redacted]

AFFIDAVIT

Plaintiff : 76 Civ 1373

JOHN M. SHAHEEN, ROY M. FURMARK, ALBIN W. SMITH, PHILIP GANDERT, PETER L. CARAS, PAUL W. RISHELL, WILLIAM J. SHERIDAN, and JOHN DOE,

Defendants. :

----------X

STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

RICHARD deY. MANNING, being duly sworn deposes and says:

1. I am U.S. counsel for Newfoundland Refining Company Limited ("NRC"), Provincial Refining Company Limited ("PRC") and the individual defendants named herein, and I make this

affidavit in support of an application for the immediate vacation of the ex parte Temporary Restraining Order signed by this Court on March 23, 1976.

2. In deference to the rules concerning the conduct of one attorney with another, I shall not characterize the affidavit filed by Mr. Barist herein in support of the ex parte order sought and granted by this Court. Suffice it to say, his client is a defendant in an action in the Supreme Court, New York County (SNR Holdings, et al v. Ataka America, Inc., et al, Docket No. 03959/76, alleging that Clarkson is a co-conspirator in a scheme to defraud NRC, PRC and their parent company of hundreds of millions of dollars. This is merely another attempt to avoid "facing up" to the problem of that case.

3. I must comment, however, that in the course of this litigation NRC and PRC and their officers have been recently subjected to two exceedingly onerous ex parte stay orders of this Court (identified below). When the same litigants (NRC and PRC) sought an ex parte order from this Court they were told that such was not permitted by the Federal rules of Civil Procedure. Equal protection of the laws is being stretched to the limit in this case.

4. Before proceeding to the merits of this ex parte action, I shall review the ex parte actions sought by the applicants

("Clarkson")herein or those acting in concert with them; these have been:

February 8, 1976: Supreme Court of Newfoundland, per Judge Mifflin, granted an ex parte order appointing Clarkson an Interim Receiver for the assets of NRC and PRC on the demonstrably fraudulent affidavit of a Japanese officer of a newly formed company called Atlantic Trading (Delaware) Corp., specifically incorporated to defraud the creditors of its parent company Ataka & Co., Ltd.

February 17, 1976: An ex parte order was entered in this Court by Justice Knapp upon application of another Japanese affiliate Sanko Steamship Lines, attaching the bank accounts not only of NRC and PRC but five other affiliated companies, who had nothing whatsoever to do with the claims there presented. At the first hearing the spurious action was dismissed forthwith by Judge Knapp, but an attachment order remains while the appeal is pending.

March 3, 1976. After NRC and PRC filed suit in New York to protect certain interests which will be hereinafter described and while the defendants (associated with Clarkson) in such case was examining under oath an officer of such companies, an ex parte order was entered by the same Judge

Mifflin mentioned above, enjoining said companies from proceeding further with the suit before this Court. The then presiding judge, Judge Motley, chose not to endeavor to protect the jurisdiction of this Court from such ex parte Canadian orders and in order not to violate said ex parte injunction, plaintiff took a Rule 41 discontinuance without prejudice.

March 18, 1976: Ex parte order entered by Judge Stecher (New York Supreme Court) on an order to show cause why Clarkson, a defendant in a case alleging fraudulent co-conspiracy, should not be substituted for the plaintiff therein.

March 23, 1976: An ex parte order granted by this Court on the basis of an affidavit which can charitably be described as misguided.

(5) The only ex parte order up to today granted to NRC and PRC in the course of this multi-litigation problem was a temporary restraining order granted by the New York Supreme Court, per Judge Gellinoff, on March 4, 1976, which was followed on the same day by a full hearing granted by Judge Gellinoff to some 12 lawyers representing the other side. He refused to vacate his temporary restraining order; today, Judge Tyler signed the attached Order to Show cause (Exhibit I), which will be dealt with at the end of the affidavit.

This is not exactly what is called even-handed justice.

(6) Turning to the affidavit filed by the lawyer in this case, who by his own admissions entered the case on Wednesday, March 17, 1976, I shall endeavor to separate fact from fiction. Prior to doing so, however, I must call this Court's attention to the fact that the Courts of the State of New York (which this Court is considered to be in a diversity case under the Erie doctrine) have refused to permit attorney's affidavits in support of applications for ex parte orders. (e.g., Banco Agricola v. Jiminez Export Corp., 97 N.Y.S. 2d 437 (Sup. Ct. N.Y.Cty 1950).

(7) Dealing with the subject matter of attorney Barist's affidavit, starting with the sub-heading on page 2, I have a number of comments. In order to address myself directly to each specific allegation, I have attached hereto as Exhibit A a marked copy of such affidavit with letters noted thereby which correspond to the comments below:

(a) This whole paragraph purports to deal with what took place in Canada during the week of March 8-12, 1976. Mr. Barist was not even involved in this case during that period of time. There has been no transcript of the record produced by the court reporter, and consequently every word

in this paragraph is rankest kind of hearsay. It is shocking that a New York lawyer would make such a statement when in fact he has no personal knowledge whatsoever of the facts stated in this paragraph. This paragraph should be sticken as rank hearsay.

(b) These two paragraphs sound more like public relations brochures than they do affidavits in a lawsuit. Obviously Mr. Barist cannot speak for what happened to Clarkson for the past one hundred years, nor does he have personal knowledge about what Clarkson has been doing in Canada in recent years, or what they have been doing in connection with the Atlantic acceptance of IOS cases, other than what someone has told him. These two paragraphs should be stricken as rank hearsay.

(c) Mr. Barist does not state that he is qualified to practice law in Canada. Consequently, his statements concerning the laws of Canada, without even bothering to quote the statutes involved, are of little if any value. This paragraph should be stricken as an unfounded conclusion of foreign law.

(d) This paragraph purports to deal with something that happened at the offices of NRC and PRC during conferences at which Mr. Barist was not present. He does not have personal

knowledge as to whether or not the orders (Exhibits A and B to his affidavit) were handed over to NRC or PRC or not. He does not have any personal knowledge whatsoever of the material stated in these two paragraphs. He is, without telling the Court, apparently relating some story someone else told him. This paragraph should be striken as rank hearsay.

(e) Mr. Barist knows has no personal knowledge whatsoever about the Shaheen companies. This sentence should be stricken as rank hearsay.

(f) Mr. Barist cannot possibly have any personal knowledge of these transactions as they all occurred prior to the time he entered this case. This material should be stricken as rank hearsay.

(g) Same comment as paragraph (f).

(h) So far as Mr. Barist statement that "no consideration to NRC has been shown" he does not indicate to whom this should have been shown; he certainly does not allege that he ever asked for it. This sentence should be stricken as it is irrelevant.

(i) Mr. Barist's comments about the case in the Federal Court before Judge Motley is a good example of (i) how little he knows about this case, or (ii) the fact that he has deliberately sought to mislead this Court. The fact is, that the hearings before Judge Motley were voluntarily dismissed by plaintiffs because the defendants in that

action, the very people who had Clarkson's appointed as Interim Trustee in Canada, were afraid to risk a decision by Judge Motley. They went to Canada during the pendency of the hearing and obtained an ex parte restraining order against the continuance of the suit by NRC and PRC, two Newfoundland corporations. In deference to the issuance of that restraining order, plaintiffs took a Rule 41 discontinuance (see Exhibit B hereto). It was the defendants (Clarkson as co-conspirators) who were afraid of the Federal Court's decision and had the plaintiffs enjoined.

(j) This simply is not true (see Exhibit C).

(k) Every word is hearsay and the paragraph is scandalous and defamatory. This should be stricken from this affidavit.

(l) Unsupported conclusions; perhaps Mr. Barist does not mind fraudulent conspirators pouring over his books, but NRC, PRC and their stockholders do object; their presence creates irreparable injury.

(m) There is no basis whatsoever for this malicious accusation other than the fact that Mr. Barist's clients possibly engage in such activities and they presume others do. As will be herein proved, Clarkson has had people in the New York and Newfoundland offices of NRC and PRC since February 17, 1976 (Exhibit D), and are fully aware of what records are there. They

have also had control of the New York bank accounts of NRC and PRC since that date. This unfounded scurrilous accusation should be stricken.

(8) As is clearly demonstrated from a review of the Barist affidavit there is absolutely no factual basis whatsoever for the allegations contained herein and no support for the Order entered by this Court. The affidavit clearly shows why the Federal Rule 65(b), is so strict on the granting of ex parte orders and why the New York Courts have frowned upon lawyer's affidavits forming the basis for the issuance of ex parte orders.

(9) Clarkson's status as Trustee in Bankruptcy is highly questionable, at best. Without going into all of the complex questions of Canadian bankruptcy law, suffice it to say there are two trustees of these companies. At 11:07 a.m. on March 12, 1976, the Official Receiver of the Federal Government of Canada appointed Coopers & Lybrand Limited ("Coopers") as Trustee of both companies (Exhibit C). At about 5:00 p.m. on the same day, the Provincial judge at a hearing which I attended in St. John's, Newfoundland, entered an order appointing Clarkson as Trustee (Exhibits A & B to Barist affidavit herein). The Order of the Offical Receiver of Canada has

never been recinded or otherwise revoked (see attached letter dated March 23, 1976, from Coopers. An appeals is being taken by NRC and PRC from the Order of the Provincial Court (Exhibit E) and Coopers is taking a separate appeal.

I have attached a copy of my letter dated March 23, 1976, to Judge Tyler of the New York Supreme Court concerning this matter (Exhibit F).

A mere reading of Section 49 of the Canadian Bankruptcy Act and comparing it to the Order signed by Judge Mifflin at 5:00 p.m. on March 12th, makes it clear that he did not modify or alter the statutory stay required by Section 42; he failed to follow several other statutory requirements and it would appear that his appointment was a violation of the stay imposed by Section 49. Only the Canadian Courts can untie this Gordian knot.

As the Barist affidavit discloses, Clarkson has taken the remarkable position in the State Court proceeding that Clarkson should be substituted as plaintiff in the case in which they, and the companies which appointed them, are co-defendants. This presents several problems -- first, suppose the State Court refuses to recognize that Clarkson is the Trustee and this Court does recognize Clarkson as Trustee?

Which will be the controlling decision? Second, what happens if Clarkson, an alleged co-conspirator who is trying to destroy NRC and PRC, is given the books and records of these companies and Clarkson destroys then.

(11) Prior to NRC and PRC having a single minute before any Canadian Court, Clarkson in furtherance of the conspiracy, shut down the Come by Chance refinery, fired the five hundred employees, closed the offices of NRC and PRC throughout Canada. All on the basis of the ex parte appointment of Clarkson as Receiver and Interim Trustee on the basis of a "trumped up" default which never occurred, as is hereinafter explained. Surely under such circumstances, Clarkson who has no legal standing in this country whatsoever (Oakey v. Bennett, 52 U.S. 33 (1851)) is not entitled to seek recognition under rules of comity under such circumstances (In Re Warte, 99 N.Y. 433 (1885); Koninklijke Lederfabriek "O". v. Chase Nat. Bank, 30 N.Y.S. 2d 518 (Sup.Ct. 1st Dept. 1941)).

In any event it would appear that the "Case of the Two Trustees" must be settled in Canada before any U.S. Court gets involved in this matter.

(12) Attached hereto as Exhibit G, is a rather lengthy Memorandum of Facts which was prepared for the State Court action but which may be of some assistance in this Court in understanding this complex litigation. Also attached are Exhibits filed in support of the Memorandum (Exhibit H).

(13) In summary, here is what has happened:

(A) By an Agency Agreement dated September 20, 1973, executed in New York, between Ataka & Co. Ltd. ("Ataka Japan"), its U.S. subsidiary, Ataka America, Inc. ("Ataka America"), and Newfoundland Refining Company Limited ("NRC"), acting as principal and as agent for PRC.

The purpose of the Agency Agreement was to provide the required financing for the purchase of 100,000 barrels of crude oil per day required for a refinery then under construction by PRC at Come by Chance, Newfoundland. Under the terms of various contracts, NRC supervised the construction of the refinery and after completion thereof, managed the refinery for PRC. It also was the purchaser of the crude to be supplied to the refinery and sales agent for its products.

The Agency Agreement was executed in New York, and contained the following clause:

> "X) This agreement shall be construed in accordance with the laws of the State of New York and any dispute arising between the parties shall be submitted for determination by a New York court."

(B) Since the crude oil contract provided for 150 days credit, the amount of money which would be outstanding at any one time based on the prices in effect on September 1, 1973, was $34 million. Following the drastic price

increases imposed by the OPEC countries in late 1973 and early 1974, that amount increased in 1974 to approximately $150 million. In other words there would be approximately $150 million outstanding at any one time due to the 150 days crude credit. Ataka agreed to provide the necessary letters of credit to obtain this crude oil and to pay the crude oil supplier for the crude oil.

(C) A very careful method for payment of the crude oil by PRC was provided in the Agency Agreement which makes quite clear that no funds are to be due and owing to Ataka if the non payment thereof is due to events of force majeure. No default has ever been called under the Agency Agreement.

(D) Ataka and PRC operated well under the Agency Agreement for a period of 2 years. During this period approximately one half billion dollars of crude oil was financed by Ataka. On nineteen separate occasions PRC could not pay for crude oil on the due dates, and in every case the date was "rolled over" without protest; over $100 million of such "roll overs" were involved.

(E) Due to drastic errors made by the construction contractor of the refinery, the plant was not able to produce sufficient funds to pay Ataka for all of the funds advanced. Clearly under the Agency Agreement this was an event of force majeure and was contemplated by the parties. The Agency Agreement specifically provides that:

> "The intention of ACAM is to enable NRC to overcome start-up difficulties in the initial start-up stage until the refining operation has reached the normal scheduled production stage...."

Since the refinery has not yet reached a point where the commercial operations have been reached, there is no question but that the events which actually occurred were contemplated by the parties.

(F) In late 1975, the Japanese bank which was financing Ataka, the Sumitomo Bank, became very upset about the situation and the undertakings Ataka had made. They began to intervene in the relationships between Ataka and NRC and PRC.

(G) In October of 1975, the First National Bank of Chicago, which held a $28 million debenture secured by certain inventory at the refinery, called a default and appointed a Receiver, which was Clarkson. After some negotiations Ataka agreed to pay this loan which, during the negotiations, was reduced by PRC to $18 million. Pursuant to this refinancing of the old debt, a demand debenture was issued to Ataka on November 8, 1975 ("the First Debenture").

(H) As part of the foregoing, Ataka requested (contrary to the Agency Agreement) that it be granted a Third Mortgage on the refinery which required the consent of the holders of the First and Second Mortgages. NRC and PRC agreed readily to the issuance of the Third Mortgage to secure the then outstanding Ataka debt. As part of the transaction, NRC and PRC agreed that Ataka could enter their office at 90 Park Avenue, New York, New York, and supervise all of the handling of the funds of these two companies. NRC and PRC were under no obligation to do this, but it was done voluntarily in order to demonstrate to Ataka and its banks that PRC and NRC were operating the company on as sound a basis as was possible considering the unfortunate condition of the refinery.

(I) By letter dated November 4, 1975, Ataka specifically assured the holders of the First and Second Mortgages on the plant that it would permit two crude oil ships then scheduled to arrive at the refinery in December (the "GOLAR BETTY") and in January (the "ELEFTHEROUPOLIS") to discharge and that it would continue financing PRC's crude oil purchases and it would not discontinue such financing without giving the senior creditors 10 days written notice. No such notice has ever been given. Ataka also agreed to "roll over" certain PRC bills of exchange which were due on November 11th.

(J) As a part of the foregoing transaction, PRC entered into an agreement with Ataka dated November 7, 1975, in which PRC agreed to the extent possible to apply all proceeds from the sale of refined products to repayment of the First Debenture, and an account was to be opened in the Sumitomo Bank for the purpose of depositing and disbursing such funds.

(K) From November 12, 1975 to February 13, 1976, there were Ataka personnel in the offices of NRC and PRC at all times, and Ataka, under the direct supervision of the Sumitomo Bank, directed NRC and PRC with respect to all dispositions of their cash.* In fact, only Ataka personnel were signatories on the Sumitomo Bank account of PRC opened pursuant to the November agreement.

(L) Referring back for the moment to the November 4, 1975 undertaking of Ataka to the senior creditors, Ataka agreed to "roll over" a bill of exchange of approximately $21 million that was due on November 11, 1975. On November 11th, Ataka did roll a bill of exchange over for a period of one year.

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*It should be recalled that the Canadian Bankruptcy proceeding was instituted solely by Atlantic Trading, Ataka's sister company and assignee of all Ataka claims against NRC and PRC. Clarkson was appointed Interim Receiver on Atlantic's application to the Canadian Court.

(M) Sometime between November 11th and December 16th, 1975, Morgan Stanley & Co. Incorporated ("Morgan Stanley"), another co-defendant in the State Court action, entered the picture and from then on "the ball game changed."

(N) A carefully constructed plan emerged (of course not made known to NRC and PRC) to which Morgan gave the code name of "PROJECT WINNET", which was calculated to, and did

(1) breach the Agency Agreement which had been performed by Ataka for two years;

(2) raided NRC and PRC of all of the available cash;

(3) caused the illegal assignment of all Ataka's claims against NRC and PRC to Atlantic Trading; and

(4) culminated in the fraudulent filing of a bankruptcy petition against NRC and PRC in Newfoundland on February 13, 1976.

(O) From the documents available to NRC and PRC (no discovery having yet been had) it appears that the "Pearl Harbor Day" was December 16, 1975. On that day, the "GOLAR BETTY" was at the refinery dock. This was the ship Ataka had assured the senior creditors would be discharged along with the continued financing being made available to PRC. For the first time since the Agency Agreement was signed on September 20, 1973, Ataka breached the agreement and totally changed the arrangement.

Instead of presenting a bill of exchange to PRC as it had done on all of the one half billion dollars of crude oil purchases, Ataka demanded that the crude oil be paid for as follows:

(1) Ataka would lend $25 million to PRC against a Debenture ("Second Debenture") dated December 16, 1975, in similar form as the First Debenture, payable February 15, 1976. The Debenture would be secured by a "floating lien" on the PRC inventory.

(2) Ataka would then sell the crude oil to PRC for cash.

The lack of crude oil would have shut down the refinery in mid-winter, which would have been a disaster. The "Hobsons Choice" was do as Ataka (or more accurately, Sumitomo) said or shut down the plant.

(P) The Second Debenture required that all monies paid to Ataka for any reason would be applied against payment of the Second Debenture.

It is to be noted that this provision is flatly contradictory to the November 7, 1975 Agreement, which provided for payments to be made to Sumitomo so the First Debenture could be paid. It is quite clear that when this abrupt change had been made, the bankruptcy of NRC and PRC had then been decided upon. If all payments had been applied to the First

Debenture, they probably would have been voidable preferences as an antecedent debt was involved. The Second Debenture being created for a current loan, was created to get around that apparent impediment, thus permitting Ataka to bleed all of the funds from NRC and PRC and avoiding the problem of a voidable preference. The payment date is February 15, 1976, which was a Sunday. The ex parte bankruptcy proceeding was instituted on Friday, February 13, 1976.

(Q) When the second ship arrived in January, 1976, after a long period of vacillation, part of the cargo was discharged under similar circumstances on January 30th and a Third Debenture was issued.

(R) During the period December 16, 1975-February 13, 1976, by various methods, Sumitomo and Ataka "bled" PRC of more than $30 million more than enough to pay the First Debenture.

The reason so much emphasis is placed upon the ability of PRC to pay the First Debenture is that it did have the ability to pay and did in fact pay the First Debenture. It will be recalled that the original provisions for repayment of the First Debenture -- the November 7, 1975 Agreement, which was never terminated -- was that all of the funds from the sale of refined products were to be applied in payment of the First Debenture.

It is obvious that if all of these funds had been applied to the First Debenture as required by the November 7, 1975 Agreement, that Debenture would have been paid in full, and no demand for payment thereunder could have been made. Under such circumstance, the Second and Third Debentures could not have been accelerated because they were not due, and the appointment of Clarkson as Receiver was clearly illegal.

The reason the application of the funds to the Second Debenture was not permissible was that the Second Debenture was issued for the purchase of crude oil which was covered by the Agency Agreement. No default had been claimed by Ataka on PRC's part or NRC's part under the Agency Agreement, and Ataka had no basis whatsoever for changing the required payment procedure from that specified in the Agency Agreement. It should also be noted that the action of Ataka in requiring issuance of the Second and Third Debentures was an expressed violation of the November 4, 1975 undertaking, made to the senior creditors that these ships would be permitted to discharge under conditions.

Thus, the Second and Third Debentures were themselves violations of the Agency Agreement and no funds were owed to Ataka thereunder. There was adequate money to pay the First Debenture and therefore the "mad race" to bankruptcy was all built upon a false premise.

Affidavit of R. deY. Manning

On Friday the Thirteenth of February, the carefully constructed plan to crush NRC and PRC was put into action:

First a spate of letters were delivered to PRC in Newfoundland which taken together, indicate the "stampede nature of the action." Simultaneously, Atlantic Trading (i) demanded payment of the $18 million due on the First Debenture; (ii) delivered a default notice on the First Debenture and claimed such default as an acceleration of the Second and Third Debentures; (iii) invoked the Receivership clause of the First, Second and Third Debentures and (iv) ordered Clarkson to take control of all of the inventory of PRC. Simultaneously, Clarkson delivered a letter accepting the appointment as Receiver and taking possession of the inventory. At the same time, using the appointemnt of the Receiver as an alleged act of default, the holders of the First and Second Mortgages declared defaults and appointed Clarkson as Receiver of the mortgaged assets (primarily the refinery) which Clarkson simultaneously accepted.

Second, based upon the appointment of Clarkson at Atlantic Trading's behest, Atlantic Trading made an ex parte application to the Bankruptcy Court and had an Interim Receiver, again Clarkson, appointed by the Court. The affidavits in support of this application were so demonstrably false as to be criminal.

IT IS TO BE NOTED THAT NRC AND PRC RECEIVED NOTICE OF ALL OF THE FOREGOING AT THE SAME TIME ON FEBRUARY 13, 1976.

Third, on the same day, the Sumitomo Bank illegally seized $2.6 million of PRC funds on deposit with it in New York.

Fourth, on the same day they appeared at the New York office of NRC and PRC with representatives of Messrs. Davis, Polk and Wardwell and Skadden Arps, et al, whom they identified as being Clarkson's counsel. This move was resisted by NRC and PRC on the grounds that Clarkson had no legal standing in New York. A voluntary arrangement was worked out between Clarkson and NRC and PRC dated February 17, 1976, under which these parties voluntarily permitted Clarkson to come in and act as a Receiver as it has been doing from that date to the present.

Fifth, on February 20, 1976, Sumitomo illegally converted $900,000 of PRC's funds in its bank -- all that was left in the account.

Sixth, on the same day, Sanko Steamship Company, another Japanese company, entered the picture by bringing suit in New York in violation of a British forum selection clause in its charter parties with NRC and seized not only the bank accounts of NRC, with whom it had charter parties, but also attached the accounts of five other companies with which Sanko had no connection whatever. During all of

this, Clarkson, who purports to be an independent certified Trustee in Canada, is nothing more than a puppet at the end of a string held by Morgan. Clarkson walked into the offices of NRC and PRC on February 13, with Messrs. Davis, Polk and Wardwell, who are known throughout New York as the counsel to Morgan Stanley. Also Clarkson's counsel was Messrs. Skadden, Arps, long associated with Morgan Stanley in its take over bids.

Tyler in the Supreme Court, New York County, an application by Clarkson to be substituted as plaintiff in the action by the stockholders of NRC and PRC against Clarkson and its co-defendants. In that case the Court has before it the identical question raised in this case, i.e., does Clarkson have any legal standing in the State pursuant to the Order of the Newfoundland Bankruptcy Court? An impossible result would follow in the event the State Court and this Court should arrive at different conclusions on the same question.

(14) Upon receipt of the Order to Show Cause I made an Application to Judge Tyler for an Order to Show Cause with a Temporary Restraining Order, which he signed at approximately 4:00 p.m., March 24, 1976 (Exhibit H). The Temporary Restraining Order reads as follows:

> "ORDERED, that pending the hearing and determination of this motion, said defendant, its agents, attorneys and employees be, and hereby are, enjoined and restrained from taking any further action in the State of New York or interfering in any way with the business or assets of NRC or PRC or their officers, located in the State of New York, (a) pursuant to the purported appointment of said defendant as Trustee in Bankruptcy by Order dated March 12, 1976 of the Provincial Court of Newfoundland; or (b) pursuant to the purported authority granted said defendant as Receiver under the First Mortgage on the PRC refinery at Come By Chance, Newfoundland, the Second Mortgage on the said refinery and under the First, Second and Third Debentures issued by PRC...."

(15) It is respectfully suggested that

(a) there is no factual foundation to suport this Court's Order of March 23, 1976

(b) substantially the same issue is pending in the prior commenced State Court action

(c) Clarkson's standing under Canadian law is being challenged in the Courts there, and this Court ought not to prejudice the outcome of the Canadian appeal;

and therefore the Order entered herein on March 23, 1976, should be vacated forthwith and a stay entered of all proceedings herein until the State Court has rendered a final decision on Clarkson's legal status in the State of New York.

Richard deY. Manning

Sworn to before me this
25th day of March, 1976.

Notary Public

MELANIE M. MALOS
Notary Public, State of New York
No. 31-4601444
Qualified in New York County
Commission Expires March 30, 1976

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In Re PROVINCIAL REFINING COMPANY LIMITED and NEWFOUNDLAND REFINING COMPANY, LIMITED, Bankrupts.	AFFIDAVIT IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION AND APPLICATION FOR TEMPORARY RESTRAINING ORDER
THE CLARKSON COMPANY LIMITED, as Trustee in Bankruptcy, appointed by the Supreme Court of the Province of Newfoundland, of the property of Newfoundland Refining Company Limited and Provincial Refining Company Limited, Plaintiff, -against- JOHN M. SHAHEEN, ROY M. FURMARK, ALBIN W. SMITH, PHILIP GANDERT, PETER L. CARAS, PAUL W. RISHELL, WILLIAM J. SHERIDAN and JOHN DOE, Defendants.	76 Civ. 1373 (R.O.)

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JEFFREY A. BARIST, having been duly sworn, says:

I am a member of the bar of this Court and of the firm of White & Case, attorneys for The Clarkson Company Limited ("Clarkson"), as Trustee in Bankruptcy of Newfoundland Refining Company Limited ("NRC") and Provincial

Refining Company Limited ("PRC"). I make this affidavit in support of Clarkson's motion for a preliminary injunction and application for a temporary restraining order.

Clarkson requests an order for a preliminary injunction:

(a) Enjoining defendants from destroying, altering, secreting or removing any books or records of NRC or PRC;

(b) Enjoining defendants from disposing, disbursing, secreting or removing any property of NRC or PRC;

(c) Requiring defendants to give Clarkson custody and control of all books and records of NRC and PRC; and

(d) Requiring defendants to give Clarkson custody and control of all property of NRC and PRC.

The temporary restraining order here sought would provide that, pending the hearing and determination of the motion for a preliminary injunction, the defendants be required to (a) refrain from transferring any of the books and records of NRC and PRC from their present location and from destroying, altering or secreting any of the same; and (b) give Clarkson immediate control of the books and records of NRC and PRC; and (c) restrain defendants from disbursing, removing or secreting any other property of NRC and PRC in their custody or control.

Clarkson's Appointment as Trustee in Bankruptcy of NRC and PRC

On February 13, 1976, Atlantic Trading (Delaware) Corporation ("Atlantic") filed with the Supreme Court of the

Exhibit A

Province of Newfoundland, Canada, pursuant to the Canadian Bankruptcy Act (Canada), R.S., c. 1970, Chap. B-3 (the "Canadian Bankruptcy Act") Petitions for Receiving Orders alleging that PRC and NRC were insolvent and had ceased to meet their liabilities generally as they became due.

On March 12, 1976, the Chief Justice of the Supreme Court of the Province of Newfoundland, Canada, issued its Receiving Orders (the "Orders") against NRC and PRC adjudging NRC and PRC bankrupt and appointing Clarkson as Trustee in Bankruptcy of the property of NRC and PRC. Attested copies of such Orders are annexed as Exhibits A (Order relating to NRC) and B (Order relating to PRC) hereto.*

(A) The Orders of the Supreme Court of the Province of Newfoundland adjudicating NRC and PRC bankrupts and appointing Clarkson as Trustee in Bankruptcy resulted only after adversary proceedings in which PRC and NRC through counsel contested the adjudication of bankruptcy. Notice was given to the corporations after the filing of the Petitions for Bankruptcy pursuant to Canadian law, and a week-long trial was held before Chief Justice Mifflin of the Supreme Court of the Province of Newfoundland on March 8 through 12, 1976. The Orders of Adjudication of Bankruptcy wereissued only after all parties had been heard. The bankruptcy proceedings established that PRC and NRC were indebted to the amount of hundreds of millions of dollars and were hopelessly insolvent. Included in the major creditors are the Government of the Province of Newfoundland and the Government of the United Kingdom.

* Original copies of the Orders duly authenticated by the Vice Consul of the United States in Newfoundland are in counsel's possession and are available for examination or filing if the Court so requests.

Exhibit A

Clarkson is licensed by the Bankruptcy Superintendent of Canada to carry on a practice as a Trustee in Bankruptcy in all the provinces of Canada except Quebec (where any such trustee must be an individual) and British Columbia and believes that it conducts the largest such practice in Canada. Clarkson and its predecessors have conducted a bankruptcy practice for more than 100 years.

Clarkson has had extensive practical experience in recent years with major bankruptcies having international ramifications, including the proceedings in connection with the liquidations of Atlantic Acceptance Corporation and I.O.S., Ltd., in the latter of which matters Clarkson served as liquidator. In this connection, Clarkson has acted in many jurisdictions other than Canada, including the United States. (B)

Clarkson's Title to Property of NRC and PRC and Defendant's Refusal To Turn Over Property of NRC and PRC

Under Article 50, Section 5 of the Canadian Bankruptcy Act, title to all property of a bankrupt vests immediately in the trustee in bankruptcy upon his appointment. Thus title to the property of NRC and PRC located in New York in question herein vested in Clarkson, as Trustee in Bankruptcy, by operation of law on March 12, 1976, the day of its appointment as Trustee in Bankruptcy. Article 12, Section 2 of the Canadian Bankruptcy Act specifically provides that the trustee "shall as soon as may be, take possession of the deeds, books, records and documents and all other property of the bankrupt..." and "is entitled to enter upon any premises on which the books, records or (C)

property of the bankrupt may be...". Moreover, Article 12, Section 4 of the Canadian Bankruptcy Act explicitly provides that "no person is, as against the trustee, entitled to withhold possession of the books of account belonging to the bankrupt."

On February 13, 1976 Atlantic applied for the appointment of an Interim Receiver of NRC and PRC. The Supreme Court of the Province of Newfoundland granted this petition and Clarkson was appointed Interim Receiver of NRC and PRC. Pursuant to the authority vested in it as Interim Receiver Clarkson commenced its examination of the affairs of NRC and PRC and gained limited access from the defendants to the books and records of NRC and PRC located in New York.

After Clarkson's appointment as Trustee on March 12, 1976, defendants refused to give Clarkson any access to the books and records of PRC and NRC. Clarkson went to the offices of NRC and PRC located at 90 Park Avenue, New York, New York 10016 and presented true and correct copies of the Orders (Exhibits A and B hereto) of the Supreme Court of the Province of Newfoundland. Clarkson further left with agents of defendants copies of Notice to Bankrupt Corporations which outlined the duties of the bankrupt (copies of said Notices are attached hereto as Exhibit C [as to NRC] and D [as to PRC]). The Notices are acknowledged as having been received in Newfoundland by Homer White, President of NRC and PRC. Clarkson demanded immediate possession and control of all property of NRC and PRC, including the books and records of the corporations.

Defendants, by their agents, refused to turn over

possession of the books and records of NRC and PRC and refused Clarkson access to any of said books and records.

Clarkson thereupon filed a complaint in this Court seeking Orders of permanent injunction requiring defendants to turn over to Clarkson all property of NRC and PRC. A copy of the complaint is annexed as Exhibit E.

Facts Supporting the Need for Immediate Control of the Books and Records

PRC is the owner of a refinery for petroleum products at Come-By-Chance, in the Province of Newfoundland (the "Refinery"). NRC, by written agreement, is the operator of the Refinery and manager of the business of PRC. Both NRC and PRC are parts of a complex web of interrelated corporations, all ultimately owned or controlled by John M. Shaheen ("Shaheen").

Although knowledge of the workings, interrelationships and financial arrangements among the various members of the Shaheen group is limited by the dearth of publicly available information, certain of the facts which are known establish why the Trustee in Bankruptcy must have immediate possession and control of all books and records of NRC and PRC. For example:

(i) Unaudited financial statements for NRC and PRC as of November 30, 1975 show those companies as having huge accounts receivable (approximately $49 million for NRC and $10 million for PRC) owing to them from other companies in the Shaheen group, including nearly $45 million owed by Shaheen Natural Resources Company, Inc. (a company wholly owned by

John M. Shaheen) to NRC and $455,320 owed by John M. Shaheen personally to NRC. It appears that millions of dollars were sent from NRC and/or PRC to Shaheen controlled companies at a time when NRC and PRC were, if not insolvent, known to be running losses of millions of dollars. The books and records of NRC and PRC thus far examined do not show what consideration was paid to NRC and PRC. Annexed as Exhibit F are summaries of inter-corporate receivables prepared by chartered accountants in the employ of Clarkson, based upon the access to the books and records of PRC and NRC previously given Clarkson by defendants.

(f)

(ii) The audited financial statements of PRC at December 31, 1974 disclose a capital deficit of some $58 million, a working capital deficiency of $116 million and a loss for the year of $58 million. Subsequent to this time substantial sums of money were paid to Shaheen related companies.

(g)

(iii) The unaudited financial statements of PRC to September 30, 1975 disclose a deficit of $164 million and a nine-month loss of $58 million.

(iv) About $10 million was "advanced" by NRC to Shaheen Natural Resources Company Inc. in 1975. No consideration to NRC has been shown.

(h)

The Petitions for Bankruptcy filed on February 13, 1976 in the Supreme Court of Newfoundland have evoked continual opposition and harassment from those controlling the bankrupt corporations. At the point of this affidavit,

Exhibit A

the Shaheen group has filed at least four actions attempting to upset the Canadian bankruptcy. These are as follows:

(i) Newfoundland Refining Company Limited et ano v. Ataka America Inc. (76 Civ. 941 (S.D.N.Y.). After hearings before Judge Motley the action was voluntarily dismissed by plaintiff before any decision was rendered.

(ii) Provincial Refining Company et ano v. Kleinwort Benson Ltd. et ano (Supreme Court, New York County, Index No. 93740/76).

(iii) Provincial Refining Company Limited et ano v. Province of Newfoundland et ano (Supreme Court, New York County, Index No. 03960/76).

(iv) SNR Holding Company, Inc., as sole stockholder of Newfoundland Refining Company Limited and Provincial Refining Company Limited v. Ataka America Inc. et al. (Supreme Court, New York County, Index No. 03959/76). In this action Clarkson has moved to be substituted as plaintiff pursuant to CPLR §1017. The Shaheen group opposed on the grounds that it had filed an amended complaint adding Clarkson as a defendant on the same day that Clarkson was appointed Trustee in Bankruptcy. The Shaheen group in this action has not denied that Clarkson was appointed Trustee in Bankruptcy by the Supreme Court of New Foundland on March 12, but has contended that the filing of a "proposal" (akin to a plan for voluntary reorganization under Chapter XI under American law) in which the Shaheen group proposed another trustee, which was rejected by the Newfoundland Court, somehow affects Clarkson's appointment by the Orders of the Court annexed hereto as Exhibits A and B.

Exhibit A

In all of these actions the Shaheen group sought to find a way to get the American court to enjoin the Canadian bankruptcy proceedings. None of these actions have succeeded and the Shaheen group has been without success in its attempt to harass and interfere with the Canadian bankruptcy proceedings. The Shaheen group has appealed the Canadian court's adjudication of bankruptcy, contending, inter alia, that the Canadian judge erred in not appointing the Shaheen group's choice of Trustee and plan of reorganization.

Need For Immediate Relief

(K)

The facts recited herein provide a reasonable basis for concluding that the control and operation of NRC and PRC by the defendant officers and directors of those companies have resulted in dissipation and waste of the assets of those companies and that funds have been "upstreamed" from PRC and NRC to other corporations within the Shaheen group or to Shaheen himself. The extent to which assets and revenues have been diverted, transferred, secreted, dissipated and wasted cannot be known unless and until the Trustee gains access to the books, records, accounts and other documents relating to the financial affairs of NRC and PRC.

Among the matters which demand immediate attention and action to conserve the assets of companies such as NRC and PRC are the following:

(i) Investigation and identification of any

payments which may be considered either as preferential or otherwise in fraud of creditors;

(ii) Identification and notification of the banks at which NRC and PRC maintain accounts so that disbursements will not be made to the prejudice of creditors;

(iii) Identification and notification of all creditors of the companies as to the pendency of bankruptcy proceedings so that creditors may present claims and Clarkson may examine the propriety of the claims; and

(iv) Identification of all assets, liabilities and obligations of NRC and PRC so that Clarkson, as Trustee in Bankruptcy, can effectively discharge its mandate to conserve the assets of the estates and effectively advise the Court in Newfoundland and the creditors of the companies how to proceed in order to optimize their return on the remaining assets of NRC and PRC.

In order to perform these and other vital duties as Trustee in Bankruptcy, it is obviously essential that Clarkson be granted immediate possession and control of NRC's and PRC's banking records, including, but not limited to, accounting records (including books of original entry), sales and purchase records, contractual agreements and records relating to the location and condition of assets.

(2) The temporary restraining order sought by Clarkson provides for Clarkson's possession and control of the books and records of NRC and PRC. It poses no threat of injury to those companies of any kind whatsoever.

Exhibit A

For the reasons set forth herein, it is respectfully submitted that temporary and preliminary relief is warranted by the circumstances of this case and that such relief is necessary for the protection of the estate and property of NRC and PRC, for the avoidance of irreparable injury to Clarkson in its efforts to discharge its responsibilities as an appointee of the Supreme Court of the Province of Newfoundland, and for the protection of the creditors of NRC and PRC, which consist of a diverse group of foreign governments and international companies with total claims of hundreds of millions of dollars.

I request this temporary restraining order ex parte because the facts as known indicate that there is substantial likelihood that the books and records will be altered, destroyed or secreted or that other property of the bankrupts may be secreted or disbursed if notice is given of this application.

No application for the relief sought herein has been made previously.

Jeffrey A. Barist

Sworn to before me this
23rd day of March, 1976.

EDNA R. SUSSMAN
Notary Public, State of New York
No. 31-4627710
Qualified in New York County
Commission Expires March 30, 1977

EXHIBIT B

B 102

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NEWFOUNDLAND REFINING COMPANY LIMITED, and PROVINCIAL REFINING COMPANY LIMITED, Plaintiffs, vs. ATAKA AMERICA, INC., ATAKA & CO., LTD., ATLANTIC TRADING (DELAWARE) CORP., and THE SUMITOMO BANK, LTD., Defendants.	Before: HON. CONSTANCE BAKERMOTLEY, District Judge. 76 Civ. 941

New York, March 3,4, 1976

STENOGRAPHER'S MINUTES

Miss Driscoll has said, the minute books which by stipulation were going to be available to us here at 9:30 this morning do not appear to have arrived.

THE COURT: I guess they don't plan to go on with it. Give us a few minutes to see if we can find him and close it out by having him make a statement on the record that he acknowledges service now and is going to honor the injunction.

MR. KOEGLER: We will be happy to stay as long as it seems appropriate, Judge.

THE COURT: It shouldn't be long.

(Recess.)

MR. MANNING: Your Honor, I was just handed a telecopy or a copy of the order of the Supreme Court of Newfoundland which I had dictated over the telephone last evening after I got back to the office, and the Court in Newfoundland at the application of the defendants in this case who are before this Court yesterday and apparently before the Newfoundland court at the same time without informing this Court or informing me or informing our counsel who are five minutes away from the Judge's chambers, it is ordered that, and I am quoting:

"Provincial Refining Company,Limited, its servants, agents, employees, officers, directors, attorneys

and solicitors acting on its behalf be restrained and enjoined from taking any further action or otherwise participating in an action commenced by the said Provincial Refining Company, Limited, against Atlantic Trading (Delaware) Corporation, et al., which action is entitled," and the caption of this case is set forth, "or in any other proceedings whereby the proceedings pending before this Court relating to a petition for a receiving order filed with this Court on the 13th of February, 1976 by Atlantic Trading (Delaware) are in any way restrained or otherwise affected," and so forth.

As I read this order, your Honor, I am here simply to inform this Court of it and to say to this Court that unless on its own motion the Court chooses to do something to protect its jurisdiction, I don't see how I can act further in this matter.

Your Honor has carefully preserved the rights of the parties to a hearing where they are represented by counsel and everybody is aware of what is going on. You were not made aware of what happened up there in Canada yesterday by these gentlemen and their counsel, and I wasn't, and our counsel in Newfoundland were not.

But an ex parte order was issued against us, and to the extent that order applies to these two companies

it will be honored.

THE COURT: Since you are going to honor the order, I would assume that that would end or terminate the proceeding which we had under way here to determine whether this Court had jurisdiction in the first instance to grant the relief which you sought.

MR. MANNING: Your Honor, I did not say that. I think this Court, as the Supreme Court of the United States has held years back, this Court has jurisdiction to determine its jurisdiction and it has jurisdiction to issue an enjoining injunction pending its determination.

I suggest that if this Court wishes to protect its jurisdiction, it has the power to do so.

THE COURT: It seems to me that since you have indicated, and I think you should honor the order until set aside, that there is nothing further to be done in this case. Isn't that so?

MR. MANNING: That, your Honor, is up to you. I think you have the power to preserve your jurisdiction, which, if you will recall on Friday last, I told you that the reason I wanted a TRO was that I was afraid that something would happen in the intervening period that might deprive this Court of its right to hear this case.

THE COURT: With respect to the relief sought, I think there were many serious questions with respect to the propriety of that, questions relating to committee, so I don't know that there is any clear indication that you would be entitled to that, plus a serious question of jurisdiction.

So that with respect to this case I would say that it should either be dismissed without prejudice or assigned to the suspense calendar of the Court.

MR. MANNING: I would accept the former, your Honor.

THE COURT: That is dismissed without prejudice?

MR. MANNING: Yes, your Honor.

THE COURT: Suppose you file or prepare an order.

MR. MANNING: I have a Rule 41 order right here, if I could just find it through all these papers.

THE COURT: All right. Then we will discontinue this without prejudice, in view of the order which you have now enjoining you from proceeding.

MR. REDMOND: Is your Honor going to so order this?

THE COURT: Yes.

MR. KOEGLER: Your Honor, may I make one inquiry? If it is dismissed without prejudice, I suppose that there

EXHIBIT C

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------X

SNR HOLDING, INC. as sole stockholder of NEWFOUNDLAND REFINING COMPANY LIMITED & PROVINCIAL COMPANY LIMITED: and SHAHEEN NATURAL RESOURCES COMPANY, INC.,

Plaintiffs,

against

AFFIDAVIT

ATAKA AMERICA, INC., ATAKA & CO. LTD., ATLANTIC TRADING (DELAWARE) CORP., THE SUMITOMO BANK LTD., MORGAN STANLEY & CO. INC., CLARKSON & CO. LIMITED, CLARKSON, GORDON & CO., KLEINWORT BENSON LIMITED and THE GOVERNMENT OF THE PROVINCE OF NEWFOUNDLAND AND LABRADOR,

Index No. 03959/76

Defendants.

----------X

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

RICHARD deY. MANNING, being duly sworn, deposes and says:

I am a member of the firm of Manning, Carey & Redmond, attorneys for the plaintiffs in the above entitled action and I am fully familiar with the pleadings and proceedings heretofore had herein. I make this affidavit in opposition to the motion of The Clarkson Company Limited ("Clarkson"), a named defendant herein, for an order substituting it as a plaintiff in this action and staying all proceedings herein pending determination of this motion.

Exhibit C

Plaintiff SNR Holdings, Inc. ("SNR") is suing as sole stockholder of Newfoundland Refining Company Limited ("NRC") and Provincial Refining Company Limited ("PRC"). SNR found it necessary to take this route because PRC and NRC, even before they were wrongfully thrown into bankruptcy in Canada, were restrained by the Supreme Court of Canada from taking any steps in New York to protect themselves.

The amended complaint herein alleges that Clarkson took part in a conspiracy to

(a) violate plaintiffs' contract right to have all disputes between them and Ataka determined by a New York Court;

(b) violate §489 of the Judiciary Law; and

(c) have PRC and NRC declared bankrupt in Canada.

Those companies were in fact declared bankrupt on March 12, 1976. As more fully appears from the affidavits submitted on the companion motions in this case, the Canadian Court refused to honor a contractual forum selection clause which would have required all proceedings against PRC and NRC to be instituted in a New York Court and also refused to give effect to New York Judiciary Law §489 which renders the assignment to the petitioner in the bankruptcy proceeding illegal.

It is clear that Clarkson can not act in the best interests of the bankrupt corporations as it has participated in the conspiracy against them which caused the bankruptcy

in the first place. Yet Clarkson has the audacity to ask this Court to substitute it for SNR, whose hands have not been tied by the Canadian Court and whose actions have been and will continue to be in the best interests of the bankrupt corporations. Clarkson's intent, in making this motion, can only be to halt this action and thereby deal the final deadly blow to PRC and NRC, which was the ultimate object of the conspiracy.

The foregoing constitutes sufficient grounds for denying this motion. But there is a further compelling reason for doing so. Clarkson makes the instant motion as trustee in bankruptcy of PRC and NRC. There is serious doubt as to the legality of its appointment.

Your deponent was in Newfoundland on March 12, 1976, the date when PRC and NRC were adjudicated bankrupts. As the documents annexed hereto indicate, at 11:07 a.m. on that date, Mr. Ronald B. Twohig, an Official Receiver of theFederal government of Canada, acting pursuant to the authority vested in him by that Government under the Federal Bankruptcy Act, appointed Coopers & Lybrand Limited as Trustee of both NRC and PRC. Exh.h.Ts A + B Hereto. I am advised by our Canadian counsel that this appointment should have been considered by the provincial judge in the bankruptcy proceeding. However, consistent with the total disregard of the rights of PRC and NRC which was exhibited during that entire proceeding including the

ex parte appointment of Clarkson as Interim Receiver, the judge refused to consider the governmental appointment and proceeded, at about 5:00 p.m. on the same date, to appoint Clarkson as Receiver or Trustee. Coopers & Lybrand is presently seeking judicial review of this arbitrary decision.

It is clear, under the circumstances, that this Court is not the proper place for a determination of this question of Canadian Bankruptcy Law. This motion is completely without merit and there is absolutely no ground for a stay pending its determination.

WHEREFORE, deponent respectfully requests that the motion be denied forthwith in all respects.

Richard deY. Manning

Sworn to before me this
19th day of March, 1976.

Notary Public

MELANIE M. MALOS
Notary Public, State of New York
No. 31-[illegible]
Qualified in New York County
Commission Expires March 30, 1976

Exhibit C

Consumer and Corporate Affairs / Consomma et Corporations

Bankruptcy / Faillites

EXHIBIT 111

NOTICE TO THE TRUSTEE ACTING IN A PROPOSAL MADE BY AN INSOLVENT PERSON
(Sec. 12 (1), 42 (1))

AVIS AU SYNDIC NOMMÉ DANS UNE PROPOSITION DÉPOSÉE PAR UNE PERSONNE INSOLVABLE
(Art. 12 (1), 42 (1))

In the matter of the proposal of: Dans l'affaire de la proposition de:

Estate Name — Nom de l'actif	Trustee — Syndic
Provincial Refining Company Limited	Coopers & Lybrand Limited

Official Receiver — Séquestre officiel	Division No. N° de la division	District
Ronald B. Twohig	–	Newfoundland

Date filed Date de dépôt (D-J M Y-A)	Security Deposit Cautionnement	Date (D-J M Y-A)
12 03 76	$1-MILLION	12 03 76

I, an Official Receiver in and for this Bankruptcy Division, do hereby certify:

Je soussigné, séquestre officiel dans et pour la présente Division de faillite, certifie par les présentes:

That you, the trustee acting in re the proposal of this estate, filed with me the said proposal pursuant to the provisions of section 42(1) of the Bankruptcy Act:

Qu'en qualité de syndic vous m'avez produit une copie de la proposition susdite conformément aux dispositions de l'article 42(1) de la loi sur la Faillite.

You, the trustee of this estate, are required pursuant to Section 12(1) of the said Act to deposit with me security in the sum above within seven days from the date hereof.

Que vous êtes requis, conformément à l'article 12(1) de ladite loi, de déposer entre mes mains, d'ici sept jours, un cautionnement au montant indiqué en rubrique.

CANADA
BANKRUPTCY ACT
LOI SUR LA FAILLITE
TIME / HEURE
12 MAR 1976
11:07 Am
NEWFOUNDLAND
TERRE-NEUVE
OFFICIAL RECEIVER - SÉQUESTRE OFFICIEL

Official Receiver — Séquestre officiel
Ronald B. Twohig

Exhibit C

Consumer and Corporate Affairs | Consommation et Corporations

Bankruptcy | Faillites

112

Exhibit B

NOTICE TO THE TRUSTEE ACTING IN A PROPOSAL MADE BY AN INSOLVENT PERSON
(Sec. 12 (1), 42 (1))

AVIS AU SYNDIC NOMMÉ DANS UNE PROPOSITION DÉPOSÉE PAR UNE PERSONNE INSOLVABLE
(Art. 12 (1), 42 (1))

In the matter of the proposal of: Dans l'affaire de la proposition de:

Estate Name — Nom de l'actif		Trustee — Syndic
Newfoundland Refining Company Limited		Coopers & Lybrand Limited
Official Receiver — Séquestre officiel	Division No. N° de la division	District
Ronald B. Twohig	–	Newfoundland

Date filed Date de dépôt	Security Deposit Cautionnement	Date
12 03 76 (D-J M Y-A)	$1 million	12 03 76 (D-J M Y-A)

I, an Official Receiver in and for this Bankruptcy Division, do hereby certify:

Je soussigné, séquestre officiel dans et pour la présente Division de faillite, certifie par les présentes:

That you, the trustee acting in re the proposal of this estate, filed with me the said proposal pursuant to the provisions of section 42(1) of the Bankruptcy Act;

Qu'en qualité de syndic vous m'avez produit une copie de la proposition susdite conformément aux dispositions de l'article 42(1) de la loi sur la Faillite.

You, the trustee of this estate, are required pursuant to Section 12(1) of the said Act to deposit with me security in the sum above within seven days from the date hereof.

Que vous êtes requis, conformément à l'article 12(1) de ladite loi, de déposer entre mes mains, d'ici sept jours, un cautionnement au montant indiqué en rubrique.

CANADA
BANKRUPTCY ACT
LOI SUR LA FAILLITE
TIME HEURE
12 MAR 1976
11:07 Am
NEWFOUNDLAND
TERRE-NEUVE
OFFICIAL RECEIVER - SÉQUESTRE OFFICIEL

Official Receiver — Séquestre officiel
Ronald B. Twohig

EXHIBIT D

NEWFOUNDLAND
REFINING COMPANY LIMITED

113

E-D

Telephone
212 687-0250
Cable - Radio
Usinrefco NewYork
Telex 12-7032

February 17, 1976

Clarkson & Company Limited
Royal Trust Tower
P.O. Box 254
Toronto Dominion Center
Toronto, Canada M5K1J7

Gentlemen:

We hereby agree that, until further notice to you (given 24 hours in advance) and without conceding the extra-territorial effect of the orders of the Supreme Court of Newfoundland, copies of which are annexed hereto as Exhibits A and B, we will abide by the terms of those orders with respect to property located and action taken within the United States. Specifically, and without limiting as to the generality of the foregoing, we agree that we will give you immediate access to all books and records of the two undersigned corporations, provided that such access shall be during normal working hours and shall not interfere with normal operations. For the purpose of this agreement, the term "books and records" shall include, without limitation, accounting records (including books of original entry), banking records, sales records, purchase records, contractual agreements, records relating to locations of ships and lists of creditors. Also without limiting the generality of the foregoing we agree that, as provided in the annexed orders, we will give you immediate possession of the property of the undersigned companies located in the United States and permit you to control the incurring of new obligations of those companies as well as the receipts and disbursements of those companies provided that you shall not interfere with the carrying on of their businesses in the ordinary manner of trade and will not interfere with the payment of current accounts in the ordinary course of business.

We understand that, notwithstanding anything in this letter, you reserve your right (on 24 hours notice to us) to seek to have the aforesaid orders enforced in accordance with their terms in the courts of appropriate jurisdiction in the United States.

You are authorized to deliver a copy of this letter to any banking institution where either of the undersigned companies maintains an account.

PROVINCIAL REFINING COMPANY LIMITED

By _____
Roy M. Furmark, Executive Vice President

NEWFOUNDLAND REFINING COMPANY LIMITED

By _____
Roy M. Furmark, Executive Vice President

ACKNOWLEDGED:

CLARKSON & COMPANY LIMITED

By _____

EXHIBIT E

COOPERS & LYBRAND LIMITED

OFFICES IN PRINCIPAL CITIES OF CANADA

TRUSTEE IN BANKRUPTCY

Telephone (902) 425-6190
Suite 410 Duke St. Tower
Scotia Square-Halifax, N.S.

March 23, 1976.

Mr. Richard deY. Manning,
Messrs. Manning, Carey & Redmond,
Attorneys at Law,
122 East 42nd Street,
New York, N.Y. 10017.

Dear Mr. Manning:

Re: Newfoundland Refining Corp. Limited
Provincial Refining Corp. Limited

Coopers & Lybrand Limited is a licensed trustee under the Bankruptcy Act of Canada.

A petition for a bankruptcy order was filed in the Supreme Court of Newfoundland on 13 February 1976 and resulted in a bankruptcy order dated 12 March 1976. Before the bankruptcy order was made a proposal to creditors was filed with the court hearing the bankruptcy petition. We were named as the trustee in that proposal. The Bankruptcy Act of Canada provides that upon the filing of a proposal all proceedings are stayed. The trial judge ruled that this provision had no application to a petition in bankruptcy. We are advised that decided cases indicate the contrary. The trial judge cited no case in support of his decision. It is the opinion of our counsel that there was no jurisdiction to make the bankruptcy order in the face of the proposal.

We have commenced proceedings in the Supreme Court of Newfoundland to have the bankruptcy order rescinded and for directions with respect to the further conduct of the proposal. Furthermore, an appeal has been launched by the debtor companies against the bankruptcy order and an application to stay its operation has been made, which will be determined shortly.

Pending resolution of the issues outstanding in Canada we are advised by counsel that we should not attempt to intervene in proceedings in the State of New York.

Yours very truly,

Robert H. Bruce.

/vp

EXHIBIT F

F 116

MANNING, CAREY & REDMOND
ATTORNEYS AT LAW
122 EAST 42ND STREET
NEW YORK, NEW YORK 10017
212-867-1040
CABLE "RICHDEYMAN"

RICHARD DEY MANNING
D. J. CAREY JR
JOHN T. REDMOND
ANDREW M. CALAMARI
DOUGLAS L. WORTHING
ARTHUR C. SCHUPBACH

LOREN T. WOOD
COUNSEL

1044 NORTHERN BLVD
ROSLYN, N.Y. 11576
(516) 621-0740

JAIME PIERAS JR
1214 BANCO POPULAR CENTER
HATO REY, PUERTO RICO 00919
809-765-9932

March 20, 1976

Honorable Andrew R. Tyler
Justice, Supreme Court of the
State of New York
New York County Courthouse
Foley Square
New York, New York

Re: SNR Holdings, Inc. et al
v. Ataka America, Inc. et al
Index No. 03959-76

Dear Justice Tyler:

The Court was given a considerable amount of misinformation about Canadian Bankruptcy Law by counsel who became involved in this complex matter on Wednesday last. Inasmuch as the Court is now being called upon to deal with the status of the Clarkson Company Limited ("Clarkson"), a defendant herein, under the Canadian Bankruptcy Law, I thought it best to send the Court a copy of the pertinent portions of the Canadian Bankruptcy Law, as they relate to the filing of a "Proposal" (Attached are Revised Statutes of Canada, 1970, Bankruptcy Act, §§32-49).

As was conceded by Clarkson's counsel in Court, NRC and PRC filed "Proposals" on Friday, March 12, 1976 before the order of Judge Miflin was entered appointing Clarkson as Trustee.

Section 32(1)(a) indicates that such a "Proposal" was authorized. Section 32(2) requires that such Proposal be lodged "with a licensed trustee", which Coopers & Lybrand Limited is, and which NRC and PRC did.

Honorable Andrew R. Tyler March 20, 1976

Section 42(1) requires that the Licensed Trustee with whom the proposal is lodged "shall file a copy thereof with the official receiver and the time of the filing of the proposal shall constitute the time for...all other purposes of the Act."

Section 49(1) provides that upon the filing of a Proposal no creditor shall have "any remedy against the debtor or his property or shall commence or continue any action...until the trustee has been discharged or until the proposal has been refused, unless with leave of the Court..."

Section 41(1) provides that before the Court shall approve a Proposal, it shall have a report of the Trustee, the debtor and the creditors.

Section 41(2) provides that where the Court is of the opinion that the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors, the Court shall refuse to approve them.

Thus, Judge Miflin, in his order, clearly took no action on the Proposal; he did not refuse the Proposal; he took no action on the required stay of proceedings; and he did not discharge Clarkson as Trustee.

Moreover, the Canadian cases indicate that, if the effect of Judge Miflin's order was to reject the proposal, then the required stay he refused to recognize remains in effect until the appeal from his rejection has been heard and decided, In re Marquis, 35 Can. B'ruptcy Rpt, 42.

Certainly, this Court could settle the matter of the status of Coopers & Lybrand by simply placing a telephone call to Mr. Towhig, who signed the Coopers & Lybrand appointment, in Halifax, Nova Scotia (telephone number 902 426-6099) and inquiring as to whether Coopers & Lybrand is still appointed Trustee of NRC and PRC under the Federal Bankruptcy Act.

If this Court is seriously considering letting Clarkson sit as plaintiff (or whatever) on the case against it as a fraudulent co-conspirator, as well as the case against the co-conspirators, who caused Clarkson's appointment, I think it only proper that the documented record be before the Court so that the Appellate Courts may properly review this matter.

Honorable Andrew R. Tyler

March 20, 1976

To this end, I have prepared a Memorandum of Fact which is unfortunately somewhat lengthy (because this is a complex case) supported by documents, primarily those introduced in the Federal Action (which Judge Miflin enjoined at the behest of Atlantic Trading); the documents introduced in this action and certain other documents which I believe are required to complete the record herein, at least for the purposes of this pending motion.

One other point worth considering, Mr. Barist made a point that Coopers & Lybrand are accountants for NRC and PRC, and thus were disqualified. He knows this is not true. Coopers & Lybrand Limited is a corporation which is a Licensed Trustee under Canadian Laws; it is a subsidiary of Coopers Lybrand & Co., chartered accountants--exactly the same as Clarkson Company Limited is a subsidiary of Clarkson, Gordon & Co., chartered accountants (also defendants herein); what Mr. Barist failed to tell you was that Clarkson, Gordon & Co. is the accounting firm for B. P. Canada, a subsidiary of British Petroleum Company, for which defendant, Morgan Stanley, adviser to Ataka, is the investment banker.

Respectfully submitted,

Richard deY. Manning

RdeYM:MC
Enclosure

cc: Honorable Martin B. Stecher
Justice, Supreme Court of the
State of New York

Parties per attached list

Sworn statement

(2) The assignment shall be accompanied by a sworn statement in the prescribed form showing the property of the debtor divisible among his creditors, the names and addresses of all his creditors and the amounts of their respective claims and the nature of each, whether secured, preferred or unsecured.

Déclaration sous serment

(2) La cession doit être accompagnée d'une déclaration sous serment dans la forme prescrite, indiquant les biens du débiteur susceptibles d'être partagés entre ses créanciers, les noms et adresses de tous ses créanciers et les montants de leurs réclamations respectives, ainsi que la nature de chacune d'elles, que ces réclamations soient garanties, privilégiées ou non garanties.

Filing of assignment

(3) The assignment shall be offered to the official receiver in the locality of the debtor, and it is inoperative until filed with such official receiver, who shall refuse to file the assignment unless it is in the prescribed form or to the like effect and accompanied by the sworn statement required by subsection (2).

Production de la cession

(3) La cession doit être présentée au séquestre officiel dans la localité du débiteur, et elle est inopérante tant qu'elle n'a pas été déposée auprès de ce séquestre officiel qui doit en refuser la production, à moins qu'elle ne soit en la forme prescrite ou en des termes ayant le même effet, et accompagnée de la déclaration sous serment requise au paragraphe (2).

Appointment of trustee

(4) Where the official receiver files the assignment he shall appoint as trustee a licensed trustee whom he shall, as far as possible, select by reference to the wishes of the most interested creditors if ascertainable at the time; the official receiver shall complete the assignment by inserting therein as grantee the name of the trustee.

Nomination de syndic

(4) Si le séquestre officiel accepte la production de la cession, il doit nommer comme syndic, un syndic autorisé qu'il choisira, autant que faire se peut, en tenant compte des désirs des créanciers les plus intéressés, s'il est possible de s'en rendre compte à ce moment. Le séquestre officiel doit compléter la cession en y insérant comme concessionnaire le nom du syndic.

Cancellation of assignment

(5) Where the official receiver is unable to find a licensed trustee who is willing to act, he shall, after giving the bankrupt seven days notice of his intention, cancel the assignment.

Annulation de cession

(5) Si le séquestre officiel ne peut trouver un syndic autorisé qui consente à agir, il doit, après avoir donné au failli sept jours d'avis concernant son intention, annuler la cession.

Procedure in small estates

(6) Where the bankrupt is not a corporation and in the opinion of the official receiver the realizable assets of the bankrupt, after deducting the claims of secured creditors, will not exceed five hundred dollars, the provisions of the Act relating to summary administration of estates shall apply. R.S., c. 14, s. 26.

Procédures à l'égard d'actifs peu considérables

(6) Si le failli n'est pas une corporation et que, de l'avis du séquestre officiel, les avoirs réalisables du failli, déduction faite des réclamations des créanciers garantis, ne dépassent pas cinq cents dollars, les dispositions de la présente loi concernant l'administration sommaire des actifs s'appliquent. S.R., c. 14, art. 26.

PART III

PROPOSALS

PARTIE III

PROPOSITIONS CONCORDATAIRES

Who may make a proposal

32. (1) A proposal may be made by

(*a*) an insolvent person, and

(*b*) a bankrupt.

Personnes admises à proposition

32. (1) Une proposition concordataire peut être faite par

a) une personne insolvable, et

b) un failli.

Documents to be filed

(2) Proceedings for a proposal shall be commenced in the case of an insolvent person by lodging with a licensed trustee and in the case of a bankrupt by lodging with the trustee

Documents à déposer

(2) Les procédures relatives à une proposition commencent, dans le cas d'une personne insolvable, par le dépôt, auprès d'un syndic autorisé, et, dans le cas d'un failli, par le

of the estate

(*a*) a copy of the proposal in writing setting out the terms of the proposal and the particulars of any securities or sureties proposed, signed by the debtor and the proposed sureties if any, and

(*b*) if the person making the proposal is bankrupt, the statement of affairs referred to in section 129, or

(*c*) if the person making the proposal is not bankrupt, a statement showing the financial position of the debtor at the date of the proposal, verified by affidavit as being correct to the belief and knowledge of the debtor.

dépôt, auprès du syndic de l'actif,

a) d'une copie de la proposition écrite indiquant les termes de la proposition et les détails des garanties ou cautions proposées, et signée par le débiteur et les cautions proposées, s'il en est, et

b) si la personne faisant la proposition est en faillite, d'un bilan mentionné à l'article 129, ou

c) si la personne faisant la proposition n'est pas en faillite, d'un état indiquant la situation financière du débiteur à la date de la proposition, attesté par affidavit comme étant exact, selon la connaissance et croyance du débiteur.

Approval of inspectors

(3) A proposal made by a bankrupt shall be approved by the inspectors before any further action is taken thereon.

Approbation des inspecteurs

(3) Une proposition faite par un failli doit être approuvée par les inspecteurs avant que toute autre mesure soit prise à son égard.

Proposal, etc., not to be withdrawn

(4) No proposal or any security or guarantee tendered therewith may be withdrawn pending the decision of the creditors and the court.

Une proposition ne peut être retirée

(4) Nulle proposition, ni aucun cautionnement ou garantie offerts avec cette proposition, ne peuvent être retirés en attendant la décision des créanciers et du tribunal.

Duties of trustee

(5) The trustee shall make or cause to be made such an appraisal and investigation of the affairs and property of the debtor as to enable the trustee to estimate with reasonable accuracy the financial situation of the debtor and the cause of the debtor's financial difficulties or insolvency and report the result thereof to the meeting of the creditors. R.S., c. 14, s. 27.

Devoirs du syndic

(5) Le syndic doit faire, ou faire faire, relativement aux affaires et aux biens du débiteur, une estimation et une enquête qui lui permettent d'estimer avec un degré raisonnable d'exactitude la situation financière du débiteur et la cause de ses difficultés financières ou de son insolvabilité, et il doit en faire rapport à l'assemblée des créanciers. S.R., c. 14, art. 27.

Calling of meeting of creditors

33. (1) The trustee shall forthwith call a meeting of the creditors by sending by registered mail to every known creditor affected by the proposal and to the Superintendent at least ten days prior thereto

(*a*) a notice of the date, time and place of the meeting;

(*b*) a condensed statement of the assets and liabilities;

(*c*) a list of the creditors affected by the proposal with claims amounting to twenty-five dollars or more and the amounts of their claims as known or shown by the debtor's books;

(*d*) a copy of the proposal;

(*e*) a form of proof of claim and proxy in blank, as prescribed, if not already sent; and

(*f*) a voting letter as prescribed.

Assemblée des créanciers

33. (1) Le syndic doit immédiatement convoquer une assemblée des créanciers en adressant par lettre recommandée, à chaque créancier connu qu'atteint la proposition et au surintendant, au moins dix jours avant l'assemblée:

a) un avis de la date, de l'heure et du lieu de l'assemblée;

b) un état succinct des avoirs et obligations;

c) une liste des créanciers que vise la proposition, avec les réclamations se chiffrant à vingt-cinq dollars ou plus et les montants de leurs réclamations connus ou indiqués aux livres du débiteur;

d) une copie de la proposition;

e) une formule de preuve de réclamation, et une formule de procuration en blanc, selon qu'il est prescrit, si elles n'ont pas déjà été envoyées; et

f) une formule prescrite de votation.

In case of a prior meeting

(2) Where a meeting of his creditors at which a statement or list of the debtor's assets, liabilities and creditors was presented was held before the trustee is so required by this section to convene a meeting to consider the proposal and at the time when the debtor requires the convening of such meeting the condition of the debtor's estate remains substantially the same as at the time of the former meeting, the trustee may omit observance of the provisions of paragraphs (1)*b*) and (*c*). R.S., c. 14, s. 28.

En cas d'une assemblée antérieure

(2) S'il est tenu une assemblée des créanciers à laquelle a été présenté un état ou une liste de l'actif, du passif et des créanciers du débiteur, avant que le syndic soit ainsi requis de convoquer une assemblée aux termes du présent article pour étudier la proposition et que, à la date à laquelle le débiteur requiert la convocation de cette assemblée, l'état de l'actif du débiteur reste sensiblement le même qu'à l'époque de l'assemblée précédente, le syndic n'est pas tenu d'observer les dispositions des alinéas (1)*b*) et *c*). S.R., c. 14, art. 28.

Adjournment of meeting for further investigation and examination

34. Where the creditors by ordinary resolution at the meeting at which a proposal is being considered so require, the meeting shall be adjourned to such time and place as may be fixed by the chairman,

(*a*) to enable a further appraisal and investigation of the affairs and property of the debtor to be made, or

(*b*) for the examination under oath of the debtor or of such other person as may be believed to have knowledge of the affairs or property of the debtor, and the testimony of the debtor or such other person, if transcribed, shall be placed before the adjourned meeting or may be read in court upon the application for the approval of the proposal. R.S., c. 14, s. 29.

Ajournement d'une assemblée pour enquête et examen supplémentaires

34. Si les créanciers l'exigent au moyen d'une résolution ordinaire lors de l'assemblée à laquelle une proposition est étudiée, l'assemblée doit être ajournée au jour, à l'heure et à l'endroit que peut déterminer le président,

a) aux fins de permettre que soient faites une évaluation et une enquête plus approfondies concernant les affaires et biens du débiteur; ou

b) aux fins d'interroger sous serment le débiteur ou toute autre personne censée avoir connaissance des affaires ou des biens du débiteur, et le témoignage de ce dernier ou de cette autre personne, s'il est transcrit, doit être présenté à l'assemblée ajournée, ou il peut être lu devant le tribunal lors de la demande d'approbation de la proposition. S.R., c. 14, art. 29.

Creditor may assent or dissent by letter

35. Any creditor who has proved his claim may assent to or dissent from the proposal by a letter to that effect addressed by registered mail to the trustee prior to the meeting and any assent or dissent if received by the trustee at or prior to the meeting has effect as if the creditor had been present and had voted at the meeting. R.S., c. 14, s. 30.

Le créancier peut approuver ou désapprouver par lettre

35. Tout créancier qui a prouvé sa réclamation peut approuver ou désapprouver la proposition par une lettre à cet effet, adressée au syndic par poste recommandée avant l'assemblée, et si cette approbation ou désapprobation est reçue par le syndic à ou avant l'assemblée, elle a le même effet que si le créancier avait été présent et avait voté à l'assemblée. S.R., c. 14, art. 30.

Acceptance of proposal by creditors

36. (1) Subject to the rights of secured creditors, the creditors may by special resolution resolve to accept the proposal as made or as altered or modified at the meeting or any adjournment thereof.

Acceptation d'une proposition par les créanciers

36. (1) Sous réserve des droits des créanciers garantis, les créanciers peuvent, par résolution spéciale, décider d'accepter la proposition ainsi qu'elle a été faite ou changée ou modifiée à l'assemblée ou à un ajournement de celle-ci.

Voting by class

(2) Each class of creditors may but need not vote independently of the others and the vote of one class is not binding upon the others.

Vote par catégorie

(2) Chaque catégorie de créanciers peut, sans y être tenue, voter séparément des autres et le vote d'une catégorie ne lie pas les autres.

Related creditor

(3) A creditor who is related to the debtor

(3) Un créancier qui est lié au débiteur peut

Créancier lié

may vote against but not for the acceptance of the proposal.

ting by stee

(4) The trustee, as a creditor, may not vote on the proposal. 1966-67, c. 32, s. 6.

voter contre l'acceptation de la proposition, mais non pour son acceptation.

(4) Le syndic, en tant que créancier, ne peut pas voter sur la proposition. 1966-67, c. 32, art. 6.

Vote par le syndic

reditors may rovide for pervision of btor's affairs

37. At a meeting to consider a proposal the creditors, with the consent of the debtor, may include such provisions or terms in the proposal with respect to the supervision of the affairs of the debtor as they may deem advisable. R.S., c. 14, s. 32.

37. A une assemblée convoquée pour étudier une proposition, les créanciers, avec l'approbation du débiteur, peuvent inclure, dans la proposition, les dispositions ou les conditions qui peuvent être jugées convenables, relativement à la surveillance des affaires du débiteur. S.R., c. 14, art. 32.

Les créanciers peuvent assurer la surveillance des affaires du débiteur

ppointment of spectors

38. The creditors may appoint one or more, but not exceeding five, inspectors of the estate of the debtor, who shall have the powers of an inspector under this Act but subject to any extension or restriction of those powers by the terms of the proposal. 1966-67, c. 32, s. 7.

38. Les créanciers peuvent nommer un ou plusieurs, mais au plus cinq, inspecteurs de l'actif du débiteur, qui possèdent les pouvoirs d'un inspecteur aux termes de la présente loi, sous réserve toutefois de l'extension ou de la restriction de ces pouvoirs que prévoit la proposition. 1966-67, c. 32, art. 7.

Nomination d'inspecteurs

Result of non-approval of proposal

39. (1) Where the creditors refuse to accept a proposal by an insolvent person a copy of which has been filed with the official receiver as required by section 42, the debtor shall be deemed to have made an assignment on the day the proposal was so filed; and the trustee shall either

(*a*) forthwith call a meeting of the creditors present at that time, which meeting shall be deemed to be a meeting called under section 80; or

(*b*) if no quorum exists for the purposes of paragraph (*a*), call a meeting under section 80 as soon as practicable;

and at either meeting the creditors may, by ordinary resolution, notwithstanding subsection 10(1), appoint or substitute another licensed trustee for the trustee appointed under the proposal or affirm the appointment of that trustee.

39. (1) Si les créanciers refusent d'accepter une proposition faite par une personne insolvable, dont une copie a été produite au séquestre officiel comme le requiert l'article 42, le débiteur est réputé avoir fait une cession le jour où la proposition a ainsi été produite; et le syndic doit

a) convoquer aussitôt une assemblée des créanciers présents à ce moment-là, assemblée qui est réputée convoquée aux termes de l'article 80; ou

b) s'il n'y a pas de quorum aux fins de l'alinéa *a*), convoquer au plus tôt une assemblée aux termes de l'article 80;

et, à l'une ou l'autre des assemblées, les créanciers peuvent, par résolution ordinaire, nonobstant le paragraphe 10(1), nommer ou substituer un autre syndic autorisé en remplacement du syndic nommé en vertu de la proposition ou confirmer la nomination de ce dernier.

A la suite du refus d'approbation de la proposition

Report of non-approval

(2) Where the creditors refuse to accept the proposal described in subsection (1), the trustee shall forthwith file a report thereof in the prescribed form with the official receiver and the Superintendent; and the official receiver shall thereupon issue a certificate of assignment in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed pursuant to section 31. 1966-67, c. 32, s. 7.

(2) Si les créanciers refusent d'accepter la proposition mentionnée au paragraphe (1), le syndic doit immédiatement en faire rapport, en la forme prescrite, au séquestre officiel et au surintendant; et le séquestre officiel doit alors émettre, en la forme prescrite, un certificat de cession qui, aux fins de la présente loi, a le même effet qu'une cession déposée en conformité de l'article 31. 1966-67,

Rapport sur refus d'approbation

Application for

40. Upon acceptance of the proposal by

the creditors, the trustee shall apply to the court forthwith for its approval and shall send notice of the hearing of the application by registered mail, not less than fourteen days before the date of the hearing, to the debtor, to every creditor who has proved his claim and to the Superintendent; and the trustee, not less than three days before the date of the hearing, shall file in the prescribed form a report to the court on the proposal and shall forward a copy to the Superintendent not less than ten days before the date of the hearing. R.S., c. 14, s. 33.

les créanciers, le syndic doit immédiatement demander au tribunal son approbation et adresser, par lettre recommandée, un avis de l'audition de la demande, au moins quatorze jours avant la date de l'audition, au débiteur, à chaque créancier qui a prouvé sa réclamation et au surintendant; et le syndic, au moins trois jours avant la date de l'audition, doit déposer devant le tribunal, en la forme prescrite, un rapport sur la proposition et en adresser une copie au surintendant au moins dix jours avant la date de l'audition. S.R., c. 14, art. 33.

Court to hear report of trustee, etc.

41. (1) The court shall, before approving the proposal, hear a report of the trustee in the prescribed form as to the terms thereof and as to the conduct of the debtor, and, in addition, shall hear the trustee, the debtor, any opposing, objecting or dissenting creditor and such further evidence as the court may require.

Le tribunal doit entendre le rapport du syndic, etc.

41. (1) Avant d'approuver la proposition, le tribunal doit entendre un rapport du syndic dans la forme prescrite quant aux conditions de la proposition et à la conduite du débiteur; en outre, il doit entendre le syndic, le débiteur, tout créancier adverse, opposé ou dissident, ainsi que tout témoignage supplémentaire que le tribunal peut exiger.

Court may refuse to approve the proposal

(2) Where the court is of the opinion that the terms of the proposal are not reasonable or are not calculated to benefit the general body of creditors, the court shall refuse to approve the proposal, and the court may refuse to approve the proposal whenever it is established that the debtor has committed any one of the offences mentioned in sections 169 to 171.

Le tribunal peut refuser d'approuver la proposition

(2) Si le tribunal est d'avis que les conditions de la proposition ne sont pas raisonnables ou qu'elles ne sont pas destinées à avantager l'ensemble des créanciers, le tribunal doit refuser d'approuver la proposition; et il peut refuser d'approuver la proposition lorsqu'il est établi que le débiteur a commis l'une des infractions mentionnées aux articles 169 à 171.

Reasonable security

(3) Where any of the facts mentioned in sections 143 and 147 are proved against the debtor, the court shall refuse to approve the proposal unless it provides reasonable security for the payment of not less than fifty cents in the dollar on all the unsecured claims provable against the debtor's estate or such percentage thereof as the court may direct.

Garantie raisonnable

(3) Si l'un quelconque des faits mentionnés aux articles 143 et 147 est établi contre le débiteur, le tribunal doit refuser d'approuver la proposition, à moins qu'elle ne comporte des garanties raisonnables pour le paiement d'au moins cinquante cents par dollar sur toutes les réclamations non garanties prouvables contre l'actif du débiteur ou pour le paiement de tel pourcentage en l'espèce que le tribunal peut déterminer.

Priority of claims

(4) No proposal shall be approved by the court that does not provide for the payment in priority to other claims of all claims directed to be so paid in the distribution of the property of a debtor, and for the payment of all proper fees and expenses of the trustee on and incidental to the proceedings arising out of the proposal or in the bankruptcy.

Priorité des réclamations

(4) Le tribunal ne doit approuver aucune proposition qui ne prescrive pas le paiement, en priorité sur les autres réclamations, de toutes les réclamations dont le paiement est ainsi ordonné dans la distribution des biens d'un débiteur, et le paiement de tous les honoraires et dépenses convenables du syndic relatifs et connexes aux procédures découlant de la proposition ou survenant dans la faillite.

Payment to trustee

(5) All moneys payable under the proposal shall be paid to the trustee and, after payment

Paiement au syndic

(5) Tout montant payable aux termes de la proposition doit être payé au syndic et, après

Exhibit G

subsection (4), shall be distributed by him to the creditors.

Distribution of promissory notes, stock, etc. of debtor

(6) Where the proposal provides for the distribution of property in the nature of promissory notes or other evidence of obligations by or on behalf of the debtor or, when the debtor is a corporation, shares in the capital stock of the corporation, such property shall be dealt with in the manner prescribed in subsection (5) as nearly as may be.

Section 118 applies

(7) Section 118 applies to all distributions made to the creditors by the trustee pursuant to subsection (5) or (6).

Power of court

(8) Subject to subsection (4), the court may either approve or refuse to approve the proposal.

Annulment of bankruptcy

(9) The approval by the court of a proposal made after bankruptcy operates to annul the bankruptcy and to revest in the debtor, or in such other person as the court may approve, all the right, title and interest of the trustee in the property of the debtor, unless the terms of the proposal otherwise provide.

Non-approval of proposal by insolvent person

(10) Where the court refuses to approve a proposal by an insolvent person a copy of which has been filed under section 42, the debtor shall be deemed to have made an assignment on the day that the proposal was so filed and the trustee shall forthwith call a meeting of the creditors under section 80, at which meeting the creditors may by ordinary resolution, notwithstanding subsection 10(1), appoint or substitute another licensed trustee for the trustee appointed under the proposal or affirm the appointment of that trustee.

Refusal by court

(11) Where the court refuses to approve the proposal described in subsection (10), the trustee shall forthwith file a report thereof in the prescribed form with the official receiver and the Superintendent; and the official receiver shall thereupon issue a certificate of assignment in the prescribed form, which has the same effect for the purpose of this Act as an assignment filed pursuant to section 31.

Costs when proposal refused

(12) No costs incurred by a debtor on or incidental to an application to approve a proposal, other than the costs incurred by the

convenables mentionnés au paragraphe (4), doit être distribué par lui aux créanciers.

Distribution de billets à ordre, d'actions, etc., du débiteur

(6) Lorsque la proposition prévoit la distribution des biens sous forme de billets à ordre ou d'autres titres d'obligations souscrites par le débiteur ou en son nom ou, si le débiteur est une corporation, sous forme d'actions du capital social de la corporation, ces biens doivent être traités dans la mesure du possible ainsi que le prescrit le paragraphe (5).

L'article 118 s'applique

(7) L'article 118 s'applique à toutes les distributions faites aux créanciers par le syndic conformément au paragraphe (5) ou (6).

Pouvoir du tribunal

(8) Sous réserve du paragraphe (4), le tribunal peut approuver ou refuser d'approuver la proposition.

Annulation de faillite

(9) L'approbation par le tribunal d'une proposition faite après la faillite a pour effet d'annuler la faillite et de réattribuer au débiteur, ou à toute autre personne que le tribunal peut approuver, le droit, le titre et l'intérêt complets du syndic aux biens du débiteur, à moins que les conditions de la proposition n'en stipulent autrement.

Défaut d'approuver une proposition faite par une personne insolvable

(10) Lorsque le tribunal refuse d'approuver une proposition faite par une personne insolvable, proposition dont une copie a été produite aux termes de l'article 42, le débiteur est réputé avoir fait une cession le jour où la proposition a été ainsi produite et le syndic doit immédiatement, aux termes de l'article 80, convoquer une assemblée des créanciers au cours de laquelle les créanciers peuvent, par résolution ordinaire, nonobstant le paragraphe 10(1), nommer ou substituer un autre syndic autorisé en remplacement du syndic nommé en vertu de la proposition ou confirmer la nomination de ce dernier.

Refus du tribunal

(11) Lorsque le tribunal refuse d'approuver la proposition mentionnée au paragraphe (10), le syndic doit immédiatement en faire rapport en la forme prescrite au séquestre officiel et au surintendant et le séquestre officiel doit alors émettre, en la forme prescrite, un certificat de cession, qui, aux fins de la présente loi, a le même effet qu'une cession déposée en conformité de l'article 31.

Frais lorsque la proposition est refusée

(12) Si le tribunal refuse d'approuver une proposition, il ne doit être accordé sur l'actif du débiteur

trustee, shall be allowed out of the estate of the debtor if the court refuses to approve the proposal. R.S., c. 14, s. 34; 1966-67, c. 32, s. 8.

occasionnés pour ce dernier une demande d'approbation de la proposition sauf ceux qu'a subis le syndic. S.R., c. 14, art. 34; 1966-67, c. 32, art. 8.

Effective date of proposal

42. (1) Where an insolvent person makes a proposal, the trustee shall file a copy thereof with the official receiver and the time of the filing of the proposal shall constitute the time for the determination of the claims of the creditors and for all other purposes of this Act.

Date effective d'une proposition

42. (1) Si une personne insolvable fait une proposition, le syndic doit produire une copie de cette proposition au séquestre officiel, et le moment de la production de la proposition constitue le moment pour la détermination des réclamations des créanciers et pour toutes autres fins de la présente loi.

Approval binding on creditors

(2) A proposal accepted by the creditors and approved by the court is binding on all the creditors with claims provable under this Act and affected by the terms of the proposal but does not release the debtor from the debts and liabilities referred to in section 148, unless the creditor assents thereto.

L'approbation lie les créanciers

(2) Une proposition acceptée par les créanciers et approuvée par le tribunal lie tous les créanciers qui ont des réclamations prouvables en vertu de la présente loi et qui sont visés par les termes de la proposition, mais ne libère pas le débiteur des dettes et engagements mentionnés à l'article 148, à moins que le créancier n'y consente.

Certain persons not released

(3) The acceptance of a proposal by a creditor does not release any person who would not be released under this Act by the discharge of the debtor. R.S., c. 14, s. 35.

Certaines personnes non libérées

(3) L'acceptation d'une proposition par un créancier ne libère aucune personne qui ne le serait pas aux termes de la présente loi par la libération du débiteur. S.R., c. 14, art. 35.

Receiving order upon default, etc.

43. (1) Where default is made in the performance of any provision in a proposal, or where it appears to the court that the proposal cannot continue without injustice or undue delay or that the approval of the court was obtained by fraud, the court may, on application thereto, with such notice as the court may direct to the debtor, and, if applicable to the trustee, and to the creditors, annul the proposal.

Ordonnance de séquestre en cas de défaut

43. (1) En cas de défaut d'exécution de quelque disposition que renferme une proposition, ou s'il apparaît au tribunal que la proposition ne peut être maintenue sans injustice ni retard indu, ou que l'approbation du tribunal a été obtenue par fraude, le tribunal peut, sur demande à lui adressée, après qu'a été donné au débiteur et, s'il y a lieu, au syndic et aux créanciers l'avis qu'il est loisible au tribunal de prescrire, annuler la proposition.

Validity of things done

(2) An order made under subsection (1) shall be made without prejudice to the validity of any sale, disposition of property or payment duly made, or anything duly done under or in pursuance of the proposal and notwithstanding the annulment of the proposal, a guarantee given pursuant to the proposal remains in full force and effect in accordance with its terms.

Validité des choses faites

(2) Une ordonnance rendue aux termes du paragraphe (1) doit l'être sans préjudice de la validité d'une vente ou emploi des biens ou d'un paiement dûment fait, ou d'une chose dûment exécutée en vertu ou en conformité de la proposition et, nonobstant l'annulation de la proposition, une garantie donnée conformément à la proposition conserve pleine force et effet conformément à ses conditions.

Annulment for offence

(3) A proposal, although accepted or approved, may be annulled by order of the court at the request of the trustee or of any creditor whenever the debtor is afterwards convicted of any offence under this Act.

Annulation en cas d'infraction

(3) Une proposition, même si elle est acceptée ou approuvée, peut être annulée par une ordonnance du tribunal à la demande du syndic ou d'un créancier lorsque le débiteur est subséquemment déclaré coupable d'une infraction prévue par la présente loi.

Effect of annulling order

(4) Upon the proposal being annulled, the debtor shall be deemed to have thereupon

Effet de l'annulation de l'ordonnance

(4) Sur annulation de la proposition, le débiteur est réputé avoir alors fait une cession

made an assignment and the order annulling the proposal shall so state.

et l'ordonnance annulant la proposition doit en faire mention.

Meeting of creditors to be called

(5) Where an order annulling a proposal has been made, the trustee shall forthwith call a meeting of the creditors under section 80, at which meeting the creditors may by ordinary resolution, notwithstanding subsection 10(1), appoint or substitute another licensed trustee for the trustee appointed under the proposal or affirm the appointment of that trustee.

(5) Lorsqu'une ordonnance annulant une proposition a été rendue, le syndic doit immédiatement convoquer une assemblée des créanciers aux termes de l'article 80, assemblée à laquelle les créanciers peuvent, par résolution ordinaire, nonobstant le paragraphe 10(1), nommer ou substituer un autre syndic autorisé en remplacement du syndic nommé en vertu de la proposition ou confirmer la nomination de ce dernier.

L'assemblée des créanciers doit être convoquée

Consequences of annulment

(6) Where an order annulling the proposal described in subsection (5) has been made, the trustee shall forthwith file a report thereof in the prescribed form with the official receiver and the Superintendent; and the official receiver shall thereupon issue a certificate of assignment in the prescribed form, which has the same effect for the purposes of this Act as an assignment filed pursuant to section 31. 1966-67, c. 32, s. 9.

(6) Lorsqu'une ordonnance annulant la proposition mentionnée au paragraphe (5) a été rendue, le syndic doit immédiatement en faire rapport, en la forme prescrite, au séquestre officiel et au surintendant; et le séquestre officiel doit alors émettre, en la forme prescrite, un certificat de cession qui, aux fins de la présente loi, a le même effet qu'une cession déposée en conformité de l'article 31. 1966-67, c. 32, art. 9.

Effets de l'annulation

Assignment pending approval of proposal

44. Where an insolvent person in respect of whom a copy of a proposal has been filed under section 42 makes an assignment at any time before the court has approved the proposal so filed, the date of the assignment shall be deemed to be the date on which a copy of the proposal was so filed. 1966-67, c. 32, s. 9.

44. Si une personne insolvable à l'égard de qui une copie d'une proposition a été produite aux termes de l'article 42 fait une cession à quelque moment avant que le tribunal ait approuvé la proposition ainsi produite, la date de la cession est réputée être la date à laquelle une copie de la proposition a été ainsi produite. 1966-67, c. 32, art. 9.

Cession en attendant l'approbation de la proposition

Where proposal is conditional on purchase of new securities

45. A proposal made conditional upon the purchase of shares or securities or upon any other payment or contribution by the creditors shall provide that the claim of any creditor who elects not to participate in the proposal shall be valued by the court and shall be paid in cash upon approval of the proposal. R.S., c. 14, s. 37.

45. Une proposition, faite subordonnément à l'achat d'actions ou garanties ou à quelque autre paiement ou contribution par les créanciers, doit stipuler que la réclamation de tout créancier qui décide de ne pas participer à la proposition sera évaluée par le tribunal et payée en espèces lors de l'approbation de la proposition. S.R., c. 14, art. 37.

Lorsque la proposition est subordonnée à l'achat de nouvelles garanties

Act to apply to all proposals

46. (1) All the provisions of this Act, in so far as they are applicable, apply *mutatis mutandis* to proposals.

46. (1) Toutes les dispositions de la présente loi, dans la mesure où elles sont applicables, s'appliquent *mutatis mutandis* aux propositions.

La présente loi s'applique à toutes les propositions

Companies' Creditors Arrangement Act not affected

(2) Nothing in this Act shall be deemed to affect the operation of the *Companies' Creditors Arrangement Act*, and the court may order that a proposal made by a corporation pursuant to section 32 be taken up and continued under the *Companies' Creditors Arrangement Act*. R.S., c. 14, s. 38.

(2) Nulle disposition de la présente loi ne doit être considérée comme portant atteinte à l'application de la *Loi sur les arrangements avec les créanciers des compagnies*, et le tribunal peut ordonner qu'une proposition faite par une corporation conformément à l'article 32, soit traitée et continuée d'après la *Loi sur les arrangements avec les créanciers des compagnies*. S.R., c. 14, art. 38.

Aucune atteinte à la *Loi sur les arrangements avec les créanciers des compagnies*

Exhibit G

127

PART IV

PROPERTY OF THE BANKRUPT

perty of nkrupt

47. The property of a bankrupt divisible among his creditors shall not comprise

(*a*) property held by the bankrupt in trust for any other person,

(*b*) any property that as against the bankrupt is exempt from execution or seizure under the laws of the province within which the property is situated and within which the bankrupt resides,

but it shall comprise

(*c*) all property wherever situated of the bankrupt at the date of his bankruptcy or that may be acquired by or devolve on him before his discharge, and

(*d*) such powers in or over or in respect of the property as might have been exercised by the bankrupt for his own benefit. R.S., c. 14, s. 39.

alary, wages, tc. to bankrupt

48. (1) Notwithstanding section 47, where a bankrupt is in receipt of, or is entitled to receive, any salary, wages or other remuneration from any person employing, or using the services of, the bankrupt, hereinafter in this section referred to as the "employer", the trustee, if directed by the inspectors or the credit rs, shall apply to the court for an order directing the payment to the trustee of such part of the salary, wages or other remuneration as the court may determine having regard to the family responsibilities and personal situation of the bankrupt.

Order for payment

(2) An order under subsection (1) shall be directed to the bankrupt and his employer and shall be expressed to continue for such time as the court may fix or until payment of a sum specified in the order and, unless otherwise stated in the order, it ceases to have effect on the discharge of the bankrupt.

Manner of payment

(3) An order under subsection (1) may direct payment to the trustee in such manner as the court thinks fit and without limiting the generality of the foregoing may direct payment of

(*a*) a sum certain within any specified period or periods,

PARTIE IV

BIENS DU FAILLI

Biens du failli

47. Les biens d'un failli, constituant le patrimoine attribué à ses créanciers, ne comprennent pas les biens suivants:

a) les biens détenus par le failli en fiducie pour toute autre personne,

b) les biens qui, à l'encontre du failli, sont exempts d'exécution ou de saisie sous le régime de lois de la province dans laquelle sont situés ces biens et où réside le failli,

mais ils comprennent:

c) tous les biens, où qu'ils soient situés, qui appartiennent au failli à la date de la faillite, ou qu'il peut acquérir ou qui peuvent lui être dévolus avant sa libération, et

d) les pouvoirs sur des biens ou à leur égard, qui auraient pu être exercés par le failli pour son propre bénéfice. S.R., c. 14, art. 39.

Traitement, salaire, etc., à un failli

48. (1) Nonobstant l'article 47, lorsqu'un failli reçoit ou a droit de recevoir un traitement, un salaire ou une rémunération sous une autre forme d'une personne qui emploie le failli ou utilise ses services et qui est ci-après au présent article appelée l'«employeur», le syndic, s'il en est requis par les inspecteurs ou les créanciers, doit demander au tribunal de rendre une ordonnance portant que soit payée au syndic la partie du traitement, du salaire ou de la rémunération que peut déterminer le tribunal, compte tenu des charges familiales et de la situation personnelle du failli.

Ordonnance de paiement

(2) Une ordonnance aux termes du paragraphe (1) doit être adressée au failli et à son employeur et doit indiquer expressément qu'elle reste en vigueur pendant la durée que peut fixer le tribunal ou jusqu'au paiement d'une somme spécifiée dans l'ordonnance et, sauf disposition différente de l'ordonnance, celle-ci cesse d'avoir effet à la libération du failli.

Mode de paiement

(3) Une ordonnance aux termes du paragraphe (1) peut ordonner que le paiement au syndic soit effectué de la manière jugée appropriée par le tribunal et, sans restreindre la généralité de ce qui précède, peut ordonner le paiement

a) d'une somme déterminée au cours d'une

(*b*) a percentage of any remuneration to the bankrupt that will or may become payable while the order is in force, or

(*c*) the excess over any sum certain within any specified period or periods,

and the order may, on the application of any interested party, be varied from time to time by the court having regard to any changes in the family responsibilities or personal situation of the bankrupt.

ou de plusieurs périodes spécifiées,

b) d'un pourcentage de toute rémunération du failli qui deviendra ou peut devenir payable pendant que l'ordonnance est en vigueur, ou

c) de l'excédent sur toute somme déterminée au cours d'une ou de plusieurs périodes spécifiées,

et l'ordonnance peut, à la demande de toute partie intéressée, être modifiée de temps à autre par le tribunal, compte tenu de tout changement des charges familiales ou de la situation personnelle du failli.

Service of order

(4) An order under subsection (1) shall be served on the bankrupt and is binding on him, and when the order is served on his employer it is binding on the employer named therein and any subsequent employer of the bankrupt if a copy of the order is served on such subsequent employer; but nothing in this section shall be construed to require the trustee to serve such an order on any employer of a bankrupt if it appears to the trustee inexpedient to do so.

(4) Une ordonnance aux termes du paragraphe (1) doit être signifiée au failli et lie ce dernier et, lorsque l'ordonnance est signifiée à son employeur, elle lie l'employeur y nommé ainsi que tout employeur subséquent du failli si une copie de l'ordonnance lui est signifiée; mais rien au présent article ne doit s'interpréter comme obligeant le syndic à signifier une telle ordonnance à un employeur du failli s'il apparaît au syndic qu'il est inopportun d'agir ainsi.

Signification de l'ordonnance

Offence by bankrupt

(5) A bankrupt served with an order or a copy thereof under subsection (1) who, without reasonable justification, fails or neglects to comply with the terms thereof is guilty of an offence and liable to the punishment prescribed by section 169.

(5) Un failli à qui a été signifiée une ordonnance ou une copie d'ordonnance aux termes du paragraphe (1) et qui, sans justification raisonnable, omet ou néglige de se conformer aux dispositions y contenues est coupable d'une infraction et passible de la peine prévue à l'article 169.

Infraction du failli

Default by employer

(6) Where an order under subsection (1) that has or a copy of which has been served on an employer is not complied with in accordance with its terms, the court may, on the application of the trustee, order the employer in default to pay to the trustee the amount of money that the estate would have received had the employer complied with the terms of the order made under subsection (1).

(6) Si les termes d'une ordonnance rendue selon le paragraphe (1), qui a été signifiée ou dont copie a été signifiée à un employeur, n'ont pas été observés, le tribunal peut, à la demande du syndic, ordonner à l'employeur défaillant de payer au syndic le montant qui aurait été versé à l'actif si l'employeur s'était conformé aux termes de l'ordonnance rendue selon le paragraphe (1).

Omission de l'employeur

Fixing fair and reasonable remuneration in case of related persons

(7) For the purposes of this section, the court may fix what is a fair and reasonable amount as salary, wages or other remuneration for the services being given by a bankrupt to his employer when the employer is related to the bankrupt, and may determine the part of such salary, wages or other remuneration to be paid to the trustee on the basis of the amount so fixed by the court, unless it appears to the court that the employment has been provided for the benefit of the employee and is not of any substantial benefit to the

(7) Aux fins du présent article, le tribunal peut fixer le montant juste et raisonnable du traitement, du salaire ou de la rémunération sous une autre forme pour les services qu'un failli rend à son employeur lorsque l'employeur est lié au failli, et il peut déterminer quelle partie de ce traitement, ce salaire ou cette rémunération sous une autre forme doit être payée au syndic, sur la base du montant ainsi fixé par le tribunal sauf s'il apparaît au tribunal que l'emploi a été procuré pour l'avantage de l'employé et qu'il n'offre aucun

Fixation d'une rémunération juste et raisonnable dans le cas de personnes liées

Exhibit G

oyer. 1966-67, c. 32, s. 10.

avantage appréciable à l'employeur. 1966-67, c. 32, art. 10.

Stay of Proceedings

(1) Upon the filing of a proposal made insolvent person or upon the bankruptcy ny debtor, no creditor with a claim able in bankruptcy shall have any remedy st the debtor or his property or shall ence or continue any action, execution her proceedings for the recovery of a provable in bankruptcy until the trustee een discharged or until the proposal has refused, unless with the leave of the and on such terms as the court may e.

Suspension des procédures

49. (1) Lors de la déposition d'une proposition faite par une personne insolvable ou lors de la faillite de tout débiteur, aucun créancier ayant une réclamation prouvable en matière de faillite n'a de recours contre le débiteur ou contre ses biens, ni ne doit intenter ou continuer une action, exécution ou autres procédures pour le recouvrement d'une réclamation prouvable en matière de faillite, tant que le syndic n'a pas été libéré ou que la proposition n'a pas été refusée, sauf avec l'autorisation du tribunal et aux conditions que ce dernier peut imposer. Suspension des procédures

Subject to section 57 and sections 98 to secured creditor may realize or otherwise ith his security in the same manner as uld have been entitled to realize or deal t if this section had not been passed, the court otherwise orders, but in so g the court shall not postpone the of the secured creditor to realize or ise deal with his security, except as :

(2) Sous réserve de l'article 57 et des articles 98 à 105 un créancier garanti peut réaliser sa garantie ou autrement en disposer de la même manière qu'il aurait eu droit de la réaliser ou d'en disposer si le présent article n'eût pas été adopté, à moins que le tribunal n'en ordonne autrement; mais en rendant une telle ordonnance, le tribunal ne doit pas différer le droit du créancier garanti de réaliser sa garantie ou d'en disposer autrement, sauf selon les dispositions suivantes: Créanciers garantis

n the case of a security for a debt due ne date of the bankruptcy or of the oval of the proposal or which becomes not later than six months thereafter right shall not be postponed for more six months from such date; and

a) dans le cas d'une garantie pour dette échue à la date de la faillite ou de l'approbation de la proposition ou qui devient échue au plus tard six mois après cette date, ce droit ne doit pas être différé plus de six mois à compter de cette date;

n the case of a security for a debt that not become due until more than six hs after the date of the bankruptcy or e approval of the proposal such right not be postponed for more than six hs from such date, unless all instal- of interest that are more than six hs in arrears are paid and all other lts of more than six months standing ured, and then only so long as no ment of interest remains in arrears or lts remain uncured for more than six hs, but, in any event, not beyond the at which the debt secured by such ty becomes payable under the instru- or law creating the security, except paragraph (*a*). R.S., c. 14, s. 40.

b) dans le cas d'une garantie pour une dette qui n'est pas échue avant l'expiration de six mois après la date de la faillite ou de l'approbation de la proposition, ce droit ne doit pas être différé plus de six mois à compter de cette date, à moins que ne soient acquittés tous les versements d'intérêts en souffrance depuis plus de six mois, et que ne soient réparés tous les autres manquements de plus de six mois, et alors, seulement tant qu'aucun versement d'intérêts ne demeure en souffrance ou que les manquements ne restent sans réparation plus de six mois; mais, en tout cas, non au-delà de la date à laquelle la dette couverte par cette garantie devient exigible aux termes de l'acte ou de la loi instituant la garantie, sauf en vertu de l'alinéa *a*). S.R., c. 14, art. 40.

EXHIBIT H

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

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SNR HOLDINGS, INC. as sole stockholder of NEWFOUNDLAND REFINING COMPANY LIMITED & PROVINCIAL COMPANY LIMITED; and SHAHEEN NATURAL RESOURCES COMPANY, INC.,

Plaintiffs,

against

ATAKA AMERICA, INC., ATAKA & CO. LTD., ATLANTIC TRADING (DELAWARE) CORP., THE SUMITOMO BANK LTD., MORGAN STANLEY & CO. INC., CLARKSON & CO. LIMITED, CLARKSON, GORDON & CO., KLEINWORT BENSON LIMITED and THE GOVERNMENT OF THE PROVINCE OF NEWFOUNDLAND AND LABRADOR,

Defendants.

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MEMORANDUM OF FACTS

Index No. 03959/76

This is a very complex and important case. It involves bills of exchange aggregating some $230,000,000 and additional debt of various types approximating another $100,000,000. A multimillion dollar company has been thrown into bankruptcy and 500 people fired, all before any Court looked at the matter.

It is impossible to understand the case without an explanation of the relationships between the parties, i.e., a "cast of characters" and most importantly, a thorough analysis of the Agency Agreement between NRC and the two Ataka companies.

PLAINTIFFS

Plaintiff Shaheen Natural Resources Company, Inc. ("SNR") is an Illinois corporation, licensed to do business in New York, with principal offices in New York. SNR is a holding company.

Plaintiff SNR Holdings, Inc. ("SNR Holdings") is a Delaware corporation, licensed to do business in New York. SNR Holdings is a holding company. Through an intermediate subsidiary (SNR Delaware Inc., a Delaware corporation), SNR owns approximately 75% of the stock of SNR Holdings.

Newfoundland Refining Company Limited ("NRC"), one of the corporations on behalf of which SNR Holdings has brought this action, is a Newfoundland corporation licensed to do business in New York. By contract, NRC does or did the following for the refinery mentioned below: purchased the crude oil, chartered the ships for transportation of the crude oil from the Persian Gulf to the refinery, supervised construction of the refinery, managed the operation of the refinery, sells the products produced from the refinery. SNR Holdings owns 100% of the stock of NRC.

Provincial Refining Company Limited ("PRC"),the other corporation on behalf of which SNR Holdings has brought this action, is a Newfoundland corporation licensed to do business in New York. PRC owns a 100,000 barrels per day oil refinery at Come-By-Chance, Newfoundland, which was

partially completed in late 1973. Through an intermediate holding company (Provincial Holding Company Limited, a Newfoundland corporation) NRC owns 100% of the stock of PRC.

DEFENDANTS

Defendant, Ataka & Co. Ltd. ("Ataka Japan"), is a Japanese corporation, which has been doing business in New York for more than ten years and is not licensed to do business in New York.

Defendant, Ataka America Inc. ("Ataka America"), is a New York corporation with principal offices in New York City. Ataka America is owned 100% by Ataka Japan.

Defendant, Atlantic Trading (Delaware) Corp. ("Atlantic Trading"), is a Delaware corporation licensed to do business in New York, with its principal place of business in New York. Atlantic Trading is owned 100% by Ataka Japan.

Defendant, Sumitomo Bank Ltd. ("Sumitomo"), is a Japanese bank licensed to carry on a banking business in New York.

Defendant, Morgan Stanley & Co. Inc. ("Morgan Stanley"), is a Delaware corporation licensed to do business in New York, engaged in the investment banking business.

Defendant, Clarkson, Gordon & Company ("Clarkson Gordon"), is a Canadian partnership, chartered accountants in Canada, which has been and continues to be engaged in business in New York, and is not licensed to do business in New York.

Defendant, Clarkson & Co. Ltd. ("Clarkson"), is a Canadian corporation which acts as a Licensed Trustee under the laws of Canada; Clarkson is not licensed to do business in New York and has been engaged in business in New York.

Defendant Kleinwort Benson Limited ("Kleinwort"),is a United Kingdom corporation which is not licensed to do business in New York, and which has been engaged in business in New York.

Defendant, The Government of the Province of Newfoundland and Labrador (the "Newfoundland Government"), is a Provincial Government operating in the Dominion of Canada, acted in this matter in a purely commercial capacity and which is doing business in New York.

THE "AGENCY AGREEMENT"

The Agency Agreement is in the opinion of plaintiffs the single most important document in this entire case. It was executed in New York on September 20, 1973 in identical form, one between NRC and Ataka America (Ex. 1-C(1)) and the other between NRC and Ataka Japan (Ex. 1-C(2)).

This Agency Agreement is, indeed, an incredible document, perhaps without precedent in the entire annuals of corporate financing and law. It was pursuant to this five and one-

half page document that approximately one-half billion dollars of credit was extended to finance the purchase of crude oil for the oil refinery at Come By Chance, Newfoundland over a period of two years. When one contemplates the very long and complex loan agreements customary in loans of one million dollars or less by New York banking institutions, it seems almost beyond belief that one-half billion dollars of crude oil purchases could be financed under this simple five and one-half page document. It was, however.

In addition, there is a Supplementary Agreement to the Agency Agreement, dated the same date, which is only three pages long, under which a $42 million dollar unrestricted, unsecured loan was made to NRC by Ataka (Ex. 1-D).

How did this strange circumstance come about? What was the purpose of the Agency Agreement? What obligations did Ataka undertake in the Agency Agreement? These are the critical issues that must be resolved before one can possibly understand what this very large financial dispute is about.

BACKGROUND

As would be expected, the Agency Agreement, was not negotiated and signed in a matter of a few days. It was the subject of prior negotiations dating back as early as 1972.

At the time the Agency Agreement was under final negotiation and was executed, the situation with respect to

the then under construction Come By Chance refinery was as follows:

1. The Newfoundland Government had caused PRC to be incorporated as a Crown Corporation i.e., a corporation owned principally by the Newfoundland Government; it also caused to be created Provincial Building Company Limited ("PBC"), as a Crown Corporation (Ex. 7-D).

2. PBC had executed a contract with Procon (Great Britain) Ltd., a subsidiary of Procon Inc., a U.S. corporation, which in turn was a wholly owned subsidiary of UOP Inc., a U.S. corporation engaged in the business of providing engineering and other services for oil refineries. Procon was to build the refinery for PBC on land owned by PBC and, the refinery was to be owned by PRC on substantial completion of construction. The construction was to be supervised by NRC (Ex. 7-D).

3. The Newfoundland legislation providing for the foregoing gave NRC the option to acquire the stock of PBC from the Newfoundland Government. This transfer was effectuated in late 1973.

4. On September 20, 1973, when the Agency Agreement was executed, the refinery was nearing completion and the time was approaching for the first cargo of crude oil to be purchased for the refinery. NRC was the holder of a ten

year crude oil supply contract (Ex. 7-2) for the refinery which had been executed with BP Trading Company ("BPT"), a subsidiary of British Petroleum Ltd., one of the large world-wide major oil companies.

5. In addition to managing the construction of the refinery, NRC was, pursuant to a Management Agreement, to manage the refinery for PRC, including the supplying of crude oil to the refinery, and was to act as sales agent of the refined products. In short, NRC was to provide all purchase, sales and managerial services for the refinery; PRC was merely to own the plant and operate it under NRC's instructions. This is the broadest form of agency possible.

7. The BPT crude oil contract required that a letter of credit be posted to provide payment for each cargo of crude oil as it was loaded in the Persian Gulf. Under the BPT crude oil contract, NRC had 150 days to pay for the crude oil. At the time the Agency Agreement was executed, the f.o.b. price of the crude oil under the BPT crude oil contract was $2.29 per barrel, and Ataka was required to provide aggregate financing under the 150 days credit for $34 million before the first payment was due on the crude oil.

Both before and after the execution of the Agency Agreement, Ataka either entered into or reached agreement in principal with various of the Shaheen companies to finance

many other similar transactions involving literally billions of dollars (Ex. 1-F(1) through L-(4)).

The Agency Agreement itself is a very "loose" document and is poorly structured and internally inconsistent. It was prepared primarily from drafts presented by the Atakas which were then altered by representatives of NRC and PRC. For this reason it is the conduct of the parties in execution of the Agency Agreement which is of great importance in understanding what they thought it meant.

Turning to the Agency Agreement itself, we shall analyze the critical provisions thereof, and try and place them in the proper context. Certain of the provisions are taken out of the order in which they appear to put them in a more intelligible context.

The first "WHEREAS" clause states:

> "WHEREAS, NRC is the duly authorized operator of the oil refinery at Come-By-Chance, Newfoundland, ...which is in the process of being constructed by...[BPC and PRC]"

The third and fourth "WHEREAS" clauses provided as follows:

> "WHEREAS, NRC desires to engage the services of ACAM in importing the crude oil which NRC has contracted with BP TRADING LIMITED of London (hereinafter referred to as BPT). "and/or any other supplier, and;
>
> "WHEREAS, ACAM has agreed to act as an exclusive agent in the purchase of the crude oil thus contracted and pay BPT and/or any other

> supplier, according to contracted price and sell as agent to the Provincial Refining according to the arrangements between Provincial Refining and NRC."

These clauses recognize that NRC needed a financing arrangement whereby the letters of credit could be provided as required under the BPT crude oil contract, and that Ataka was being requested to and had agreed to act as "exclusive agent in the purchase of the crude oil" and, most importantly, pay BPT for the crude oil.

Article I of the Agency Agreement provides:

> "I) NRC hereby appoints ACAM as its exclusive purchase and sales agent for ALL THE CRUDE OIL contracted by NRC with its suppliers to sell to Provincial Refining on the terms and conditions hereinafter set forth, ACAM hereby accepts such appointment and shall act as an exclusive purchase and sales agent in accordance with the terms and conditions set forth."

It is to be noted that Ataka was the exclusive purchase and sales agent for all the crude oil contracted by NRC with its supplier; thus, if the oil was not sold through Ataka the refinery would be shut down. Ataka was one of the essential elements in the operation of the refinery.

Article I of the Agreement must be looked at in the context of Article VI, which provides as follows:

> "VI) The terms of this agreement shall be in force during the life of any any [sic] extension of the crude oil contract concluded by and between NRC and BPT and/or any other future supplier until the expiration of ten (10) years or until any outstanding indebtedness of NRC to ACAM shall have been repaid whichever shall be later."

This was a long-term arrangement; the refinery could not acquire any crude oil for its operations other than through Ataka during the entire period specified in Article VI, which was to be not less than ten years and possibly considerably longer. This is important when it is recalled that under the Supplementary Agreement executed in connection with the Agency Agreement, Ataka provided NRC with a $42 million unsecured loan, which was not due until 1985.

Referring now back to Article II(a), the first part of Article (a) provides:

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> "a) All purchases by NRC and sales to...[PRC] will be executed by ACAM in accordance with the prices and terms fixed or confirmed by and between NRC and BPT, and/or any other supplier (including the furnishing by ACAM of any required letters of credit or similar guarantees)...."

This clause makes it crystal clear that Ataka was to purchase and pay for the crude oil for NRC and was to make the sales of crude oil to PRC from NRC, and that Ataka was to provide the letters of credit insuring BPT or any other crude supplier, that they would be paid for the crude oil they sold. The remaining paragraph of subparagraph (a) will be dealt with separately below.

Paragraph II(e) provides as follows:

> "e) All sales to...[PRC] and the receipt of payments according to the sales contract by and between NRC and...[PRC] shall be executed by ACAM for and on behalf of NRC. All sums so received by ACAM shall be kept in an account with a prime bank or banks in New York designated by ACAM to be used solely for the payments to BPT and or any other supplier."

It is to be noted that a bank account was to be set up where the payments for the crude oil sold to PRC under the contract between NRC and PRC which were to be executed by Ataka were to be paid into such account.

Referring back to Article II(d), this article provides:

> "d) Payment to BPT and/or any other supplier shall be made by ACAM out of the account referred to in e) below as agent only and NRC shall be solely responsible to ACAM to refund any advances or payments made including all charges and

> expenses, legal fees, stamp duties, and taxes of all nature incurred by ACAM during the course of executing the terms and conditions of the crude oil contract."

Returning for the moment to the financing provisions, it will be recalled that, with crude oil at $2.29 per barrel, as it was on September 20, 1973, the date the Agency Agreement was executed, Ataka would have advanced $34 million before the first payment became due. The only security Ataka had for this $34 million, was set forth in Article II(a):

> "...[PRC] shall establish a standby credit of THREE MILLION U.S. DOLLARS (U.S. $3,000,000)...[the issuer] shall have the obligation to pay ACAM against a draft and a statement certifying that ACAM has not received payment against its invoices for any shipment...In case ACAM is forced to draw on the stand-by credit [PRC] shall immediately replenish the stand-by credit amount to the original amount of THREE MILLION U.S. (U.S.$3,000,000) and also pay ACAM for any difference between the stand-by credit amount and the invoice amount and charges due at such time.
> "Failure to pay ACAM for any difference between the stand-by credit amount and the invoice amount and/or to replenish the stand-by credit within ten (10)business days shall constitute a default under the Default Clause noted herein.
> "On the expiration of every Eighteen (18) month period after the first shipment such stand-by credit shall be increased to an amount equal to the average of the cost of the shipments of the last three (3) months."

Perhaps the two most outstanding features of this provision are first, its total inadequacy as a security device and second, its reference to a "default under the Default Clause noted herein," because there is no Default Clause in the Agreement.

If one stretches his imagination, Article IX might be deemed the "Default Clause" to which such reference is made:

> "IX) In the event of any breach at anytime of any of the terms, conditions and agreements hereof except for causes deemed Force Majeure then at such time as the event occurs, all outstanding obligations shall immediately become due and payable unless otherwise agreed upon by the parties involved."

Here is one of the central points in this case: events of force majeure do not trigger a default under the Agency Agreement and nothing becomes due if PRC cannot pay for the crude oil due to an event of force majeure.

Equally as important is the fact that the very events of force majeure which occurred -- non performance of the refinery due to the faulty construction -- were contemplated in the Agency Agreement; the second sentence of Article II(e) provides:

> "The intention of ACAM is to enable NRC to overcome start-up difficulties in the initial start-up stage until the refining operation has reached the normal scheduled production stage."

Thus, it follows "as day doth night", if PRC could not produce the funds to pay for the crude oil due to events of force majeure, its failure was excused and no payments were due.

The refinery has not yet reached the "normal" scheduled production stage due to the faulty design and construction by the construction contractor.

That is exactly the way the parties performed the Agreement from November, 1973, until November, 1975. On nineteen separate occasions, PRC was unable to pay bills of exchange involving over a hundred million dollars which fell due; on each occasion, without so much as a murmur of protest, Ataka "rolled them over" (see e.g. Ex. 1-Q). As recently as November 11, 1975, when two bills of exchange due on November 9th and 11th, respectively, in the aggregate amount of $21,024,738, could not be paid by PRC, Ataka, without raising any objection whatsoever, extended them for one year.

Ataka on several occasions requested an increase in the amount of the $3,000,000 standby letter of credit; two of which were prior to the date on which such demand could be made (April, 1975). When PRC failed to do so, no default was called. In fact, Mr. Takagi, Managing Director of Ataka Japan, made the following statements with respect to the standby letter of credit required by PRC in the Agency Agreement:

Telex dated February 4, 1974 (Ex 1-O(2))

> "...Regarding standby credit would appreciate a revolving standby credit for nine million dollars X We assure you that we will not draw against this credit since we will always be willing to discuss any problems with you and give you assistance by other methods X The bank is getting to be very insistant therefore your effort is appreciated kindly open credit by next shipment X Best Garrds [sic]...." (Emphasis added)

Telex dated February 21, 1974 (Ex. 1-O(2)(a))

> "...I hate to be pestering you about the revolving standby credit but due to pressure being put on me by the banks via our finance director who is also making it difficult for me to conduct business freely as I have been able to do in New York, I ask your full support in this matter since it would place me in a strong position for further increased financing in future X
> "As I repeatedly informed you that I personally will guarantee you that this standby credit will not be used and in case of need I will work out with you some other method of refinancing should such instances occur X...."

Later, Mr. Arima, made the following request by letter dated August 13, 1975:

> "Reference is made to the Agency Agreement dated September 20, 1973.
> "Our record at this date shows that the outstanding stand-by credit in favor of ACAM under the Agreement is only in the amount of $3,000,000.00, while, in accordance with the Clause II)a) of the Agreement, the amount of such stand-by credit should have been increased to $22,446,666.67 on April 3, 1975, as per attached.
> "It is hereby urged that this discrepancy be corrected without delay in order to maintain unused stand-by credit as required in the Agreement." (Ex. 1-O(3))

This can hardly be labeled a Default Notice, especially if PRC was unable to provide the letters of credit due to continued difficulties with the refinery. A more specific answer to whether Ataka called a default is a specific no -- they thereafter extended PRC additional credit in the amount of $17 million on bills of exchange and $49 million in Debentures.

During all of this period, when PRC clearly was not able to pay the crude oil bills of exchange when due, and more than $100 million was "rolled over" for periods generally of one year, Ataka did not once even suggest that it was going to cease doing that which it had undertaken to do.

No displeasure was ever expressed by Ataka -- they frequently indicated that their banks were displeased, but the banks had not made the Agreement -- Ataka had.

In early 1975, Ataka indicated that its banks were seeking a third mortgage on the refinery to secure the very large debt which had arisen. Of course, Ataka had never bargained for any security, other than as provided in the Agency Agreement.

By telex dated May 20, 1975, Ataka advised NRC and PRC:

> "...have received strong caution from the banks here that Ataka must have the third mortgage by the end of the month...the third mortgage amount must be increased up to 175 million dollars maximum or 150 dollars minimum to cover the deficiency of the stand by letter of credit...your prompt attention to this third mortgage matter is absolutely essential since the whole thing will be out of our hands and the banks will be actively controlling this business." (Ex. 1-R)

This certainly cannot be called a notice of default -- to the contrary, Ataka is pleading for NRC and PRC to grant to Ataka -- for the benefit of its banks -- a mortgage Ataka had never bargained for, and Ataka knew the request was beyond the agreement it had made with NRC and PRC.

On October 23, 1975, the First National Bank of Chicago ("FNBC"), a creditor of PRC, claimed a default under a $28 million Debenture issued by PRC which was secured by a lien on the crude oil inventory at the refinery. Under the terms of the Debenture, FNBC appointed a receiver of the inventory. Thereafter, following a series of meetings, Ataka agreed to provide the necessary funds to pay FNBC plus providing additional sums if it was granted the third mortgage.

An agreement was then entered into on October 28, 1975, among Ataka, NRC, PRC and certain other Shaheen companies and UOP, Inc., the parent company of Procon which had constructed the refinery (Ex. 1-S). UOP had as part of the original financing loaned certain funds to the refinery.

The agreement recited that Ataka, UOP and FNCB wished to obtain a third mortgage on the refinery.

The agreement went on to provide that:

> "The effective date of this Agreement shall be the date on which the First Mortgagee and Second Mortgagee issues their consent to the issuance of a Third Mortgage...."

The agreement then went on to provide somewhat inconsistently:

> "2. Upon execution of this Agreement or as soon thereafter as practicable, the holders of all shares of stock [of the parent of SNR Holdings]

> ...will or will be caused to deposit with a bank or trust company...all of such stock in a voting trust...[which] will contain provision for
> "(a) power in the trustee to vote such stock in accordance with the instructions of Ataka and UOP for the election of directors...
> "(b) the voting trust to terminate upon the repayment of all amounts owed...to Ataka and UOP ...plus any amounts...advanced [under the October 28 Agreement]; [or] upon termination by Ataka and UOP of their support of PRC as provided in paragraph 3...."

That is, the voting trust was to terminate inter alia if Ataka did not provide the additional support provided for in Article 3, which provided:

> "3. Following the effective date ot [sic] this Agreement Ataka and UOP will through financial support (without any obligation to supply additional funds) and otherwise, including management of the operations, use their best efforts to continue the operations of PRC, with the right to terminate such support in the event they decide they are unable to continue such operations on a profitable basis."

It is to be noted that the financial support provided by the above quoted paragraph was to be in addition to the undertakings which Ataka had made in the Agency Agreement, which was still in full force and effect.

Also in Article 4 of the October 28th Agreement NRC agreed to cause PRC to execute and deliver the Third Mortgage. This as pointed out above was not required by the Agency Agreement or any other Agreement which those companies had with Ataka.

Paragraph 5 of the October 28th Agreement provided that:

> "Following the effective date of this Agreement the operations of...[PRC and NRC and their parent company -- SNR Delaware]...be conducted on a basis entirely separate from the other operations of the Shaheen group of companies... [they would remain]at 90 Park Avenue, New York, New York...[but] PRC will be entitled to employ on a full-time basis any personnel who presently are working partly for PRC and partly for other members of the Shaheen group of companies...."

The idea was that Ataka would immediately commence the supervision by Ataka of the affairs of NRC and PRC, all upon the assumption that the Third Mortgage would be consented to and additional financing would be provided by Ataka. After the Agreement was signed, negotiations were entered into with the holders of the First and Second Mortgages, and to the surprise and shock of everyone they refused to consent to the issuance of the Third Mortgage to UOP and FNBC. This Third Mortgage which NRC and PRC had agreed to issue would have been subordinated in all respects to the First and Second Mortgages and would have provided substantial additional funds for the operation of the company and payment for other unsecured creditors. It also provided that the First and Second Mortgages would have control, i.e., the Third Mortgage could not call a default. The refusal of the holders of the First and Second Mortgages would certainly appear to have been arbitrary, capricious and not in the best interests of the creditors of NRC or PRC.

When the proposed restructuring of the affairs of NRC and PRC fell through, Ataka then paid the balance due to FNBC, $18,000,000 (FNBC having been paid, in the interim, $10,000,000), $8,000,000 of which was unsecured, and requested the issuance of a Debenture to it. The Debenture was secured by the same "floating charge" on the inventory that had been previously securing the FNBC Debenture. Since the Agency Agreement provided for additional financing on terms to be proposed by Ataka PRC issued the Debenture on November 8, 1975, without protest (Ex. 1-U(3)).

FNBC then caused the receiver of the inventory to be removed (Ex. 1-U(2)).

In connection with the issuance of the Debenture, PRC and NRC entered into an agreement dated November 7, 1975, whereby PRC was to use its

> "best efforts to realize the early payment of amounts owed Ataka under the said Debenture and toward this end shall issue invoices to purchasers of products from the inventory assigned to Ataka under this Debenture directing payment therefor to an account in the Sumitomo Bank New York Agency...." (Ex. 1-U(1))

This Agreement was breached by Ataka from the outset, as will be more fully explained below.

An event occurred, on November 4, which becomes of considerable significance later on. By letter of that date Ataka made the following undertaking to certain holders of the First and Second Mortgages (Ex. 7-C):

> "We also agree that we shall cause the following to happen:-
> "1 The 'GOLAR BETTY' will be permitted to unload its cargo of crude oil at Come by Chance;
> "2 The Letter of Credit for the lifting of crude oil originally scheduled for October 22, 1975, for the 'CARNEGIE' will be issued within ten (10) business days from the date hereof;
> "3 The Letter of Credit becoming due on November 11, 1975, will be rolled over for a period of twelve (12) months;
> "4 The 'ELEFTHEROPOULIS' will be permitted to proceed as scheduled to Come by Chance and allowed to unload its cargo.
> "Should we at any time hereafter decide to discontinue the extension of credit to PRC for the purchase of crude oil, we shall give you ten (10) days advance written notice of such a decision."

A copy of that letter was given to NRC and PRC.

The "GOLAR BETTY" was the cargo on which the Second Debenture was forced on PRC contrary to the Agency Agreement. The "CARNEGIE" letter of credit was not issued so far as NRC and PRC are aware.

The "ELEFTHEROPOULIS" bore the cargo of which only a part was discharged and the Third Debenture forced.

The November 11th letter of credit was "rolled" over for a year.

No notice of termination of the credit to PRC was given.

In effect the First Debenture which was issued on November 8. 1976, was issued under the provisions of the Agency Agreement. It is also of considerable importance to note that the First Debenture was not negotiable. It was payable to Ataka and Ataka alone. Thus there could be no holder in due course of this instrument.

The terms of the First Debenture conflict with the provisions of the Agency Agreement, but since the Agency Agreement controlled all relations between Ataka, NRC and PRC, it is believed that the Agency Agreement is the controlling document.

Even though the October 28th Agreement never became effective because of the failure of the First and Second Mortgagees to grant their consent to the issuance of a Third Mortgage to Ataka, the Shaheen companies and Ataka proceeded with the implementation of the supervision of the affairs of NRC and PRC by Ataka. This was done voluntarily by PRC and NRC in order to assure the Ataka personnel that NRC and PRC were trying to cooperate in every way with Ataka.

What followed was a carefully designed scheme, which was calculated to, and did

(1) breach the Agency Agreement which had been performed by Ataka for two years;

(2) raided NRC and PRC of all of the available cash;

(3) caused the illegal assignment of all Ataka's claims against NRC and PRC to Atlantic Trading; and

(4) culminated in the fraudulent filing of a bankruptcy petition against NRC and PRC in Newfoundland on February 13, 1976.

Here is the sequence of events:

November 10, 1975 -- (1) Ataka personnel moved into 90 Park Avenue (Ex. 1-T(1)), pursuant to the agreement of November 7th, referred to above, substantially all proceeds from the sales of product were remitted to the Sumitomo Bank or were handled pursuant to Ataka's instructions. All of the signatories on the Sumitomo Bank account were Ataka personnel. Thus, NRC and PRC applied their operating funds only with Ataka's consent (Ex. 1-T(1)-(9)).

(2) At the same time, the Sumitomo Bank began directing Ataka as to how it would, in turn, require NRC and PRC to expend their funds. In other words, the transactions were set up so that Sumitomo would not permit Ataka to release any funds in the Sumitomo account to NRC and PRC without a prior agreement from NRC and PRC that they would dispense

those funds and all other funds of NRC and PRC as Sumitomo directed.

December 10, 1975 -- (3) Mr. Toyama of Ataka instructed Mr. McQueen of PRC as follows (Ex. 1-T(3)):

> "1. Despite of your memo Mr. Y Tanaka, senior to Mr. Takagi instructed me to adivse you on $1.5 million to Sanko
> "a) We recommend you to pay $500,000 from your Euro-American account tomorrow 11th
> "b) As a special case we allow you to transfer the sales proceeds of MABANAFT $2,760,000 from FNB Chicago to your Euro-American account and recommend you to pay rest to Sanko immediately after release.
> "2. Other sales proceeds including DEFROL's $2,760,000 shall be transferred to SUMITOMO Bank Ltd. as arranged before.
> "3. Upon receipt of your revised schedules of cash receipts and disbursements I'll talk to the Sumitomo Bank."

December 11, 1975 -- (4) The previous instructions were changed somewhat (Ex. 1-T(4)):

> "Referring to my memo dated 10th, I want to change some portion of its contents as below.
> "1. We recommend you to pay $500,000 to Sanko directly from your Euro-American account today 11th.
> "2. Sumitomo Bank shall transfer $1,000,000 to your Euro-American account today 11th and
> "3. $500,000 will be paid to Sanko directly from the account tomorrow 12th.
> "4. Another $500,000 will be paid to Sanko likewise Monday 15th and this will complete urgent Sanko matter.
> "5. Items No. 2 and 3 in my last memo remain unchanged."

Note that Sumitomo was requiring PRC to pay a creditor of NRC with whom PRC had no connection whatsoever. What the "urgent Sanko matter" involved was never explained.

December 16, 1975 (Ex. 1-T(5)) -- Mr. Toyama to Mr. Furmark:

> "Based on December schedules of cash receipts and disbursements which you supervised last week. We went to Sumitomo Bank this morning and were requested to submit the following informations. Upon receipt of them Sumitomo will reply to us on their consent to our cash flow....
> "3. In December cash disbursements schedule Sumitomo requested to show some payments to ATAKA, out of your total liability of $352,706,590.30. We are one of creditors and should be treated on a fair basis together with other noisy creditors, Sumitomo reckons."

December 16 is one of the critical dates in this entire matter. Here in this memorandum is the first demand by the bank that NRC and PRC begin making payments on the debt which, under the express terms of the Agency Agreement were not due and payable.

This is the point that it would appear that defendant Morgan Stanley entered the picture and began the orchestration of the collapse of NRC and PRC. From this point forward, Morgan Stanley began to "call the shots" for all concerned. How or why is not yet clear.

On that same date in Newfoundland the Agency Agreement was being shredded under the pressure of economic duress.

Contrary to the practice established in the Agency Agreement and followed by the parties for two years, Ataka

refused to permit the discharge of a cargo of crude oil (the "GOLAR BETTY") which had arrived at the refinery. It will be recalled that a little more than a month earlier, Ataka had assured the holders of the First and Second Mortgages that the "BETTY GOLAR" would be permitted to unload its cargo of crude oil at Come-By-Chance and that should Ataka "decide to discontinue the extension of credit to PRC for the purchase of crude oil" Ataka would give them ten (10) days written notice (Ex. 7-4).

Instead of presenting a bill of exchange to PRC as it had done on all of the one half billion dollars of crude oil purchases, Ataka demanded that the crude oil be paid for as follows:

(1) Ataka would lend $25 million to PRC against a Debenture ("Second Debenture") in similar form as the First Debenture, payable February 15, 1976 (Ex. 1-U(11)). The Debenture would be secured by a "floating lien" on the PRC inventory.

(2) Ataka would then sell the crude oil to PRC for cash.

The lack of crude oil would have shut down the refinery in mid-winter, which would have been a disaster. The "Hobsons Choice" was do as Ataka (or more accurately, Sumitomo) said or shut down the plant.

Why was this done? Patently for the purpose of obtaining a security interest in the inventory which would not be a voidable preference in the planned bankruptcy. In other words, a fraud not only on NRC and PRC but on their unsecured creditors as well.

There are two other points of interest regarding the Second Debenture. It contained the following provision:

> "Ataka agrees and the Company hereby acknowledges that all payments made after, but not on or before December 16, 1975, by [PRC, PBC or NRC] to Ataka or to any person to whom Ataka may be directly or indirectly liable in respect of the financing of crude oil purchases by for the refinery of the Company at Come-By-Chance aforesaid, however applied, shall be deemed to reduce, pro tanto, the amount secured by this Debenture...." (Ex. 1-V (II), ¶ 8)

It is to be noted that this provision is flatly contradictory to the November 7, 1975 Agreement (Ex. 1-V(1)), which provided for payments to be made to Sumitomo so the First Debenture could be paid. It is quite clear that when this abrupt change had been made, the bankruptcy of NRC and PRC had then been decided upon. If all payments had been applied to the First Debenture, they probably would have been voidable preferences, as an antecedent debt was involved. The Second Debenture, being created for a current loan, was created to get around that apparent impediment, thus permitting Ataka to bleed all of the funds from NRC and PRC and avoiding the problem of a voidable preference The payment date is

February 15, 1976, which was a Sunday. The ex parte bankruptcy proceeding was instituted on Friday, February 13, 1976.

The following took place on the next day, after the bankruptcy decision had been reached:

December 17 (Ex. 1-T(6)), Mr. Toyama To Mr. McQueen:

> "The $ one million is for the exect purpose as you described of relieving some pressure from sundry creditors. The schedule of cash disbursements in my memo of Dec. 16 is not designed to satisfy creditor's demands to reasonable extent but to the extent some of creditors can calm down for a little while that is the best we can do now. I guess."

The reason for throwing "crumbs" to the other creditors was to keep them from moving against NRC or PRC "for a little while" until Ataka had completed its plan of total destruction of NRC and PRC.

December 17 (Ex. 1-T(7)), Mr. Toyama to Mr. Furmark:

> "Referring to my memo of yesterday, I received telephone call from Sumitomo, New York this morning for Dec. and response from Tokyo is they wouldn't raise the matter on the table consisting of five Japanese banks until Sumitomo New York see some estimated payments to ATAKA for outstanding debts, as well as repayment schedule for the new debenture of 25 million dollars within the specific period, say February 15, 1976, in the revised cash forecast for Dec. and onward. "Our Mr. Arima suggests we could say to Sumitomo that estimated cash balance with Sumitomo Bank as at Dec. 31, $10,167,000 is applicable for reducing new debenture and some receipts from customers which were not indicated in our cash forecast to Sumitomo can be applicable for some debts due to ATAKA. That means cash balance carried forward from Dec. 31 becomes

> almost nil. Cash forecast for January '76 is wanted urgently to test that this can keep PRC going financially or not. I would like to hear your opinion in this matter.
> "Another matter which presses me is cash balance with Security Pacific $299,000 and with Fidelity Union Trust $170,000. Although I explained Sumitomo that these are compensating balances for bonds previously issued. They could not understand and requesting full explations with some details. If practical, I would like to have written explanations from you so that I can satisfy Sumitomo's question to full extent, today."

It is to be noted that the "raid" began on December 17th, with Ataka being required by Sumitomo to apply the entire cash balance of $10 million against the Ataka debt. This is the first clear indication that the bank was going to commence "bleeding" all of the money of PRC to apply to the Ataka debt, not to the current creditors.

As part of this "raid", Ataka drew against the $3,000,000 letter of credit of PRC, which it "guaranteed" on two occasions it would not do (see pgs. 14 & 15, herein, Ex. 1-O(2) & O(2)(a)).

January 29 (Ex. 1-T(9), Mr. Toyama to "Rosemarie":

> "Mr. Furmark agreed this morning to pay $5 million to ATAKA after your receipt from ANSCHUTZ $1,564,000. Before that receipt Sumitomo has transferred $4,000,000 this morning and PRC draw its check $4,000,000 to ATAKA. After the receipt from ANSCHUTZ possibly this afternoon Sumitomo shall transfer another 1.5 million today and PRC draw its check one million to ATAKA. The rest $500,000 shall remain in Euro-American a/c totalling 1.3 million as of end today. Out

of the fund in E/A bank PRC will send 1,128,000 to Come-By-Chance tomorrow."

On February 6, 1976, Ataka forwarded a letter on a blank sheet of paper on which Ataka's letterhead had been typed (obviously not dictated and written in Ataka's office where it kept its stationary) informing NRC and PRC as follows (Ex. 2-FF):

> "This is to confirm, as we have previously notified you by telex dated February 6, 1976 that the undersigned has, for value, assigned all amounts previously owing and to become owing to each of us by each of you to Atlantic Trading (Delaware) corporation, a wholly-owned subsidiary of Ataka & Co., of Japan.
> "Accordingly, all correspondence and payments in respect of such amounts should be directed to:
> "Atlantic Trading (Delaware) Corporation
> 1290 Avenue of the Americas
> (Room No. 1318)
> New York, New York 10019"

As it developed much later, the purported assignment did not take place on February 6, 1976, but it took place earlier in two steps as follows (Exs. A & B to Kobayashi Affidavit, dated March 16, 1976):

(1) On December 31, 1975, an illegal assignment of the Ataka America Agency Agreement and Supplementary Agreement (but not the Ataka Japan Agency Agreement), and $101,000,000 of various obligations of NRC and PRC along with an equal amount of debt owed by Ataka to the banks was made to Atlantic Trading, which had been incorporated on December 19, 1975, for the purpose of effectuating this and the subsequent planned events. It is to be noted that the assignment recited that NRC had "materially breached" the Agency Agreement -- to this date not a

single document has been located alleging such a breach on or before that date. Moreover, any breach caused by force majeure was specifically excused by Article IX of the Agency Agreement.

(2) On January 30, 1975, fourteen days before the bankruptcy, the remaining $259,000,000 of debt securities of NRC and PRC were assigned to Atlantic Trading.

Both assignments recited that they were made in New York and are to be "governed by and construed in accordance with" New York law, as did the purportedly assigned Agency Agreement.

Ataka has devoted considerable attention to why it made the assignment (Kobayashi, Ibid), but not one word has been said about why Atlantic Trading took the assignment. (Section 489 of the New York Judiciary Law deals entirely with the purpose of the assignee.)

It is beyond any reasonable belief that Atlantic Trading became the assignee of debt obligations against NRC and PRC of $350,000,000 for any purpose other than the institution of a proceeding to attempt to collect such claims -- exactly what they did fourteen days after the great bulk of the claims were assigned.

For some time prior to January 30, 1976, the date of the second assignment to Atlantic Trading, a cargo of crude oil had been sitting at the refinery dock, and Ataka would not permit it to be unloaded, again in violation of the Agency Agreement and Ataka's November 4. 1975 undertaking to the senior creditors (Ex. 7-4). Again a shutdown of the refinery was imminent. After considerable "pulling and hauling", Ataka agreed on January 30, 1976, to permit a part of the cargo, about one-third, to be unloaded, using the same tactics as used in connection with the Second Debenture. Again, facing the "Hobson's Choice", PRC issued a Third Debenture in the amount of $6,320,000 (no copy of which is available in New York).

The amount of crude oil discharged (602,000 barrels) plus the crude oil in inventory was just enough to run the refinery at the then reduced rate of 60,000 barrels for about two weeks -- right up to the projected bankruptcy target date.

It is of some importance that in late January, Morgan Stanley complained that they had no "forward plan" showing that the refinery could operate at a profit. In response, a plan was prepared and submitted to them by NRC-USA, showing that the refinery could earn, under certain circumstances, $56.8 million before financing costs (Ex. 1-Y). Apparently Morgan Stanley did nothing with this Report.

Pace Engineering Company also made an investigation of the refinery (Ex. 1-X(1) & (2)) and rendered a report to Morgan Stanley which was never given to NRC or PRC.

Thereafter, up to the fated date of February 13, 1976 -- Friday the Thirteenth -- nothing untoward occurred other than the February 6 notice of assignment which arrived on or around the 7th or 8th day of February.

On February 13th, the carefully prepared juggernaut was launched.

First, a spate of letters were fired off to PRC which, taken together, indicate the "stampede" nature of the action; in all, Atlantic Trading:

(1) demanded payment of the $18,000,000 due on the First Debenture, stating that if they did not get payment immediately they would treat the default as a default under the Second and Third Debentures (Ex. 1-Z(2)).

(2) Before NRC or PRC had time to respond, a default on the First Debenture was claimed and used to accelerate payment of the Second and Third Debenture (Ex. 1-Z(3)).

(3) Simultaneously, Atlantic Trading invoked the receivership clause on the First, Second and Third Debentures, and ordered Clarkson to proceed to take control of all of the inventory of PRC (Ex. 1-Z(4)).

(4) Simultaneously, Clarkson accepted its appointment as Receiver under the aforementioned accelerated procedures

and informed PRC that it was taking possession of the property (Ex. 1-Z(5)).

Second, based on the alleged default, ex parte applications were made by Atlantic Trading to the Bankruptcy Court in Newfoundland for the appointment of an Interim Receiver of NRC and PRC on the allegation that they were insolvent. The affidavits filed by the Japanese representative of Atlantic Trading contained deliberate false and fraudulent statements -- one of which was a $250,000,000 untruth -- which was the following:

> "THAT commencing shortly after Ataka's initial provision of financing for the purchase of crude oil, which began on September 5, 1973, Ataka has not received any substantial payments so that virtually the entire supply of crude oil to the Refinery over the past two years has been financed by Ataka." (Ex. 1-Z(16), ¶10)

In fact, $250,000,000 of the crude oil was paid for by PRC as Ataka well knows. (Ex. 1-P)

On the same day, and without notice to counsel to NRC and PRC (whose office is in the same building with counsel; one block from the courthouse), the Bankruptcy Court ex parte appointed defendant Clarkson & Co. Ltd. as Interim Receiver:

> "...IT IS ORDERED THAT The Clarkson Company Limited of St. John's...is hereby appointed Interim Receiver of the property of the said [PRC] and the said Interim Receiver is hereby directed (a) to take immediate possession of the property of the said [PRC] and control the incurring of obligations as well as its receipts and disbursements, and (b) to institute such legal proceedings in Canada and in any other jurisdiction as it deems necessary or advisable to conserve the

> property of the said [PRC] and to bring any such property and the books and records of the said [PRC] and its bank accounts located outside Canada within such Interim Receiver's possession and ontrol, but otherwise not to interfere with the carrying on of its business by the said [PRC] in the ordinary manner of trade until the hearing of the Petition herein or until the Court shall make further order, the whole, with costs to be paid out of the assets of the estate of [PRC] upon taxation thereof." (Ex. 1-Z(17))

A like order was entered with respect to NRC (Ex. 1-20(a)).

Atlantic Trading made an unsecured undertaking to be responsible for the performance of Clarkson as Interim Receiver and agreed to pay damages sustained by NRC and PRC if the order was dismissed (Ex. 1-19 & 21). The plain fact is, as the evidence shows, Atlantic has $350,000,000 of claims against NRC and PRC -- which it is barred from collecting -- and debts of the same amount. In a word it is Atlantic which is a bankrupt, not NRC or PRC.

It is most important to note, at this point, had PRC been able to pay the $18 million due on the First Debenture, none of these events would have occurred.

The reason so much emphasis is placed upon the ability of PRC to pay the First Debenture is that it did have the ability to pay and did in fact pay the First Debenture. It will be recalled that the original provisions for repayment of the First Debenture -- the November 7, 1975 Agreement, which was never terminated -- was that all of the funds from the sale of refined products were to be applied in payment of the First Debenture.

Between December 16, 1975 and February 13, 1976, PRC made payments to Ataka and Atlantic Trading aggregating $21,597,000, more than the $18 million due on the First Debenture, plus the $3 million drawn on the letter of credit, the $3 million paid to Sanko which PRC did not owe and the $2.6 million wrongfully taken by Sanko; an aggregate of over $30 million.

It is obvious that if all of these funds had been applied to the First Debenture as required by the November 7. 1975 Agreement, that Debenture would have been paid in full, and no demand for payment thereunder could have been made. Under such circumstance, the Second and Third Debentures could not have been accelerated because they were not due, and the appointment of Clarkson as Receiver was clearly illegal.

The reason the application of the funds to the Second Debenture was not permissible was that the Second Debenture was issued for the purchase of crude oil which was covered by the Agency Agreement. No default had been claimed by Ataka on PRC's part or NRC's part under the Agency Agreement, and Ataka had <u>no basis whatsoever</u> for changing the required payment procedure from that specified in the Agency Agreement. It should also be noted that the action of Ataka in requiring issuance the Second and Third Debentures was an expressed violation of the November 4, 1975 undertaking, made to the

senior creditors that these ships would be permitted to discharge under conditions (Ex. 7-4).

Thus, the Second and Third Debentures were themselves violations of the Agency Agreement and no funds were owed to Ataka thereunder. There was adequate money to pay the First Debenture and therefore the "mad race" to bankruptcy was all built upon a false premise.

Third, the Sumitomo Bank illegally seized $2.6 million of PRC's funds on deposit with it in New York.

Fourth, on February 16th, Newfoundland counsel to Ataka America (who was supposedly out of the matter entirely) and Atlantic Trading, then used the wrongful appointment of the Interim Receiver by Atlantic Trading as an event of default under the First, Second and Third Debentures (Ex. 1-Z(6)). They also, by separate letter (Ex. 1-Z(7)), reappointed Clarkson as Receiver of the inventory -- exactly what they did in the letter of February 13th -- an appointment Clarkson was already performing according to its letter of February 13th (Ex. 1-Z(5)). Clarkson again went through the charade of taking possession of the inventory it had taken over on February 13th (Ex. 1-Z (8) & (9)). This is a perfect case of the "dog chasing his tail".

As unbelievable as it may appear, they went through the entire process again on February 17th (Ex. I-Z(10) through (14)).

Fifth, on February 13th and again on the 17th, defendant Kleinwort Benson Ltd., the holder of certain debt secured by the First Mortgage on the refinery, claimed the appointment of the Interim Receiver and the appointment of a Receiver by Atlantic Trading as a default under the First Mortgage and appointed Clarkson as their Receiver. The Government of Newfoundland, as holder of the Second Mortgage did likewise.

Sixth, on February 13, Clarkson appeared at the New York office of NRC and PRC with representatives of Messrs. Davis, Polk & Wardwell and Skadden, Arps, et al, whom they identified as being Clarkson's counsel (Ex. 2 & 4). The purpose of the visit was for Clarkson to become Receiver of the assets of NRC and PRC. This move was resisted by NRC and PRC on the grounds that Clarkson had no legal standing in New York. A voluntary arrangement was worked out between Clarkson and NRC and PRC dated February 17, 1976 (Ex. 2, 4, 5(a)); this was negotiated on behalf of Clarkson by a lawyer from Messrs. Skadden, Arps et al (Ex. 4).

Seventh, on February 20, Sumitomo illegally converted $900,000 of PRC's funds, all that was left in the account (Ex. 1-W(2)).

Eighth, on the same day, February 20, 1976, Sanko Steamship Company Ltd., another Japanese company entered the picture. Sanko is the owner of three ships chartered to NRC

(not to PRC) on which Ataka was the broker and received an annual fee of $250,000, as broker (Ex. 1-B(1) & (2)). Sanko is in some way connected with Sumitomo which, on December 11, 1975, required PRC to pay Sanko $1.5 million which was claimed to be due from NRC to "complete an urgent Sanko matter." (Ex. 1-T(4)).

On February 17, 1976, Sanko filed in the U.S. District Court, Southern District of New York, a claim in Admiralty against NRC, PRC and four affiliated companies which had never had any dealings with Sanko whatsoever. On the same day, Sanko obtained from Judge Knapp an ex parte order to show cause, together with a temporary restraining order, tying up the bank accounts of all six companies. This part of the plan was designed to deprive all of the affiliated companies of funds with which to fight the concerted act to destroy the principal investment of the Shaheen companies.

The Charter Parties contained a "forum selection" clause similar to the one in the Agency Agreement, except that the Charter Parties designated England as the forum for settlement of disputes and the Agency Agreement designated New York.

Judge Knapp, unlike the Newfoundland Court, properly applied the law and found the forum selection clause controlling and dismissed Sanko's complaint.

One cog in the carefully constructed wheel designed to crush NRC and PRC had now slipped.

The Sheheen companies began to fight back.

An effort was made to file an affidavit in the Canadian action challenging the bona fides of defendant Morgan Stanley Co. Inc. The Court held that all evidence would have to be held up until the hearing on March 8, 1976, and accordingly the affidavit was withdrawn.

NRC and PRC then commenced an action in the Federal Court on February 27, 1976, seeking damages against Ataka America, Ataka Japan, Atlantic Trading and Sumitomo, and seeking to enjoin their further participation in the Canadian bankruptcy proceedings (Ex. 1).

Jurisdictional issues were raised and hearings were in progress (counsel for Ataka America and Atlantic Trading were examining the Vice President of NRC and PRC) when Atlantic Trading procured another ex parte order from Judge Miflin, this time enjoining NRC and PRC from proceeding further with the Federal Court action, and from taking any further action to interfere with the Canadian bankruptcy proceeding.

NRC and PRC then took a voluntary dismissal of the action under FRCP 41, without prejudice.

Thereafter, on the next day, the parent company of NRC and PRC commenced this action as a derivative stockholders action under BCL § 626, by an order to show cause for a temporary restraining injunction with a temporary restraining order signed by Judge Gellinoff, restraining defendants from proceeding further with the Canadian bankruptcy.

Thereafter, after what would not pass for a hearing in the United States, Judge Miflin, on March 12, 1976, acting contrary to the provisions of his Bankruptcy Laws, purported to gavel NRC and PRC into bankruptcy and, again in violation of his own laws, purported to name Clarkson as Trustee.

This Court is familiar with the subsequent proceedings by reason of the documents which have been filed herein.

Respectfully submitted,
MANNING, CAREY & REDMOND
Attorneys for Plaintiffs
122 East 42nd Street
New York, New York 10017
(212) 867-1040

Richard deY. Manning
Of Counsel

EXHIBIT (1) (C) (1)

AGENCY AGREEMENT

AGREEMENT made this 21 day of September, 1973, by and between NEWFOUNDLAND REFINING COMPANY LIMITED, a corporation organized and existing under the laws of Newfoundland, Canada, having its principal place of business at 85 Elizabeth Street, St. John's, Newfoundland, (hereinafter referred to as NRC) and ATAKA AMERICA, INC., a corporation organized and existing under the laws of the State of New York, United States of America, having its principal place of business at 633 Third Avenue, New York, New York, (hereinafter referred to as ACAM);

W I T N E S S E T H :

WHEREAS, NRC is the duly authorized operator of the oil refinery at Come-By-Chance, Newfoundland, (hereinafter referred to as PLANT), which is in the process of being constructed by PROVINCIAL BUILDING COMPANY LIMITED (hereinafter referred to as PROVINCIAL BUILDING) and PROVINCIAL REFINING COMPANY LIMITED (hereinafter referred to as PROVINCIAL REFINING), both having principal places of business in St. John's, Newfoundland and both being incorporated under the Companies Act, Chapter 168 of the Revised Statutes of Newfoundland as amended and having been registered at the Office of the Council Confederation Building, St. John's, Newfoundland.

WHEREAS, ACAM is engaged primarily in the business of importing and exporting all types of commodities and also acts as manufacturers agents and/or representatives, and;

WHEREAS, NRC desires to engage the services of ACAM in importing the crude oil which NRC has contracted with BP TRADING LIMITED of London (hereinafter referred to as BPT),

Exhibit (1)(C)(1)

and/or any other supplier, and;

WHEREAS, ACAM has agreed to act as an exclusive agent in the purchase of the crude oil thus contracted and pay BPT and/or any other supplier, according to contracted price and sell as agent to the Provincial Refining according to the arrangements between Provincial Refining and NRC;

NOW THEREFORE, in consideration of the foregoing recitals and covenants of the parties herein contained and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto mutually agree as follows:

I) NRC hereby appoints ACAM as its exclusive purchase and sales agent for ALL THE CRUDE OIL contracted by NRC with its suppliers to sell to Provincial Refining on the terms and conditions hereinafter set forth, ACAM hereby accepts such appointment and shall act as an exclusive purchase and sales agent in accordance with the terms and conditions set forth.

II) Terms of Purchase and Sales:

a) All purchases by NRC and sales to Provincial Refining will be executed by ACAM in accordance with the prices and terms fixed or confirmed by and between NRC and BPT, and/or any other supplier (including the furnishing by ACAM of any required letters of credit or similar guarantees) except that Provincial Refining shall establish a stand-by credit of THREE MILLION U.S. DOLLARS (US$3,000,000) maintained unused for the life of this agreement with a bank designated by ACAM and for the benefit of ACAM under the terms of which such bank shall have the obligation to

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pay ACAM against a draft and a statement certifying that ACAM has not received payment against its invoices for any shipment, including any interest and costs payable to ACAM. In case ACAM is forced to draw on the stand-by credit due to the failure of Provincial Refining to pay against invoice presented by ACAM, Provincial Refining shall immediately replenish the stand-by credit amount to the original amount of THREE MILLION U.S. (US$3,000,000) and also pay ACAM for any difference between the stand-by credit amount and the invoice amount and charges due at such time.

Failure to pay ACAM for any difference between the stand-by credit amount and the invoice amount and/or to replenish the stand-by credit within ten (10 business days shall constitute a default under the Default Clause noted herein.

On the expiration of every Eighteen (18) month period after the first shipment such stand-by credit shall be increased to an amount equal to the average of the cost of the shipments of the last three (3) months.

b) All prices shall be FOB loading port or ports so designated in the crude oil contract.

c) Title shall vest to NRC when the crude oil passes the flange connecting Supplier's pipeline or delivery hose with the vessel's intake pipe, at which point supplier's responsibility shall cease, and NRC shall assume all risk of loss and damage until passage of title to Provincial Refining which be at the ship's flange at the wharf at Come-By-Chance.

d) Payment to BPT and/or any other supplier shall be made by ACAM out of the account referred to in c) below as agent only and NRC

shall be solely responsible to ACAM to refund any advances or payments made including all charges and expenses, legal fees, stamp duties, and taxes of all nature incurred by ACAM during the course of executing the terms and conditions of the crude oil contract.

e) All sales to Provincial Refining and the receipt of payments according to the sales contract by and between NRC and Provincial Refining shall be executed by ACAM for and on behalf of NRC. All sums so received by ACAM shall be kept in an account with a prime bank or banks in New York designated by ACAM to be used solely for the payments to BPT and or any other supplier.

Further to the above, ACAM, as agent of NRC, agrees to extend to NRC credit facilities of ACAM for any advances to be made to BPT for the crude oil to be supplied to Provincial Refining subject to ACAM's discretion as to the amount and terms of advance to be made to BPT. The intention of ACAM is to enable NRC to overcome start-up difficulties in the initial start-up stage until the refining operation has reached the normal scheduled production stage. For such advances made by ACAM to BPT for NRC, NRC agrees to issue promissory notes to ACAM according to the repayment terms and conditions to be agreed. All promissory notes are to bear interest at the rate officially charged its trading departments by ACAM's management.

f) All other interest and other charges and its cost payable by NRC to ACAM shall be at the rate charged to ACAM and payable every one hundred eighty (180) days.

g) ACAM shall not be responsible for obtaining custom clearance at either loading port or discharging port.

Exhibit (1)(C)(1)

h) NRC shall pay to ACAM as agency compensation the sum of Two U.S. Cents (US¢2) per barrel for all crude oil loaded, payable monthly under separate invoice.

III) A photocopy of the original crude oil purchase contract by and between NRC and EPT and/or any other future supplier, shall be given to ACAM for use in executing the payments of the amount for the crude oil.

IV) ACAM agrees to keep such photocopies strictly confidential and shall not divulge the contents to any third party.

V) ACAM's reasonable counsel fees shall be reimbursed to it by NRC.

VI) The terms of this agreement shall be in force during the life of any any extension of the crude oil contract concluded by and between NRC and EPT and/or any other future supplier until the expiration of ten (10) years or until any outstanding indebtedness of NRC to ACAM shall have been repaid whichever shall be later.

VII) NRC shall establish a full insurance coverage on the shipments of crude oil and shall assign such insurance to ACAM until all obligations of NRC to ACAM has been disbursed.

VIII) As a very important part of this agreement that must be strictly adhered to so as to enable ACAM to fulfill the duties of agency, NRC agrees to give ACAM a long range, six (6) months, schedules of the vessels scheduled to load crude oil at the loading ports and also a daily schedule of any changes of the vessels and the shipments so that the credit facilities can be maintained efficiently.

IX) In the event of any breach at anytime of any of the terms,

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conditions and agreements hereof except for causes deemed Force Majeure then at such time as the event occurs, all outstanding obligations shall immediately become due and payable unless otherwise agreed upon by the parties involved.

X) This agreement shall be construed in accordance with the laws of the State of New York and any dispute arising between the parties shall be submitted for determination by a New York court.

XI) This agreement supercedes all prior agreements relating to the subject matter hereof.

IN WITNESS WHEREOF the parties hereto have caused this agreement to be executed as of the day and year first above written.

NEWFOUNDLAND REFINING COMPANY LIMITED

Exec VP.

ATAKA AMERICA INC.

EXHIBIT (1)(Z)(1)

177

PROJECT WINNET

Legal Documentation Requested of Ataka on January 5, 1976

(1) Complete set of Bills of Exchange drawn on PRC and accepted by them evidencing roughly $230 million of debt to Ataka to finance crude oil purchases. (PRIORITY ITEM)

(2) Complete set of Application for Letters of Credit in favor of BP Trading from Ataka to its banks.

(3) Documents evidencing the conveyance of the refinery from PBC to PRC. (PRIORITY ITEM)

(4) The First and Second NRC Agreements for the loans of $15 million and $10 million respectively by NRC Ltd. (USA) to PRC. (We have Notes for $8 million and $7 million, but no agreements.)

(5) PRC's "take or pay" contracts for 60% of the production of the refinery (see Sterling Agreement, Sect. 3) and any waiver of requirement for same.

(6) Commitment of the Government of Newfoundland to purchase a minimum of 5,000 bbl/day from PRC (see Sterling Agreement, Sect. 3).

(7) Opinions of counsel called for by Sterling Agreement and by First and Second Eurodollar Agreements.

(8) Documents evidencing the loan to PRC by FNBC in January 1975, secured to the extent of the inventory ($18.3 million) under the First Mortgage.

(9) Viability study called for by Sterling Agreement.

(10) Yearly estimates of receipts and expenditures and capital budgets of the refinery prepared by NRC, as called for in Sect. 3 of the Management Agreement.

(11) Unaudited quarterly financial statements of the refinery prepared by NRC (also required by Sect. 3 of Management Agreement).

(12) Letter Amendment of October 10, 1975 to the Management Agreement.

(13) BP Trading Bills of Exchange drawn on Ataka's Bank.

(14) Any letter amendment (in addition to 3 we have) to Crude Agreement which provides for putting Ataka on Bill of Lading.

(15) Crude oil sales contract between PRC and NRC referred to in NRC-Ataka Agency Agreement.

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(16) Letter relating to insurance referred to in letter amendment to Crude Petroleum Sale Agreement.

(17) Any papers or correspondence on charter parties in addition to 7 we have (including cargo carriers), or concerning renegotiation of any charters (beyond 3 Addenda to TARFALA Charter and 1 Addendum to LONDON PRIDE Charter).

(18) Any material relating to Canadian export control regulations.

(19) $12 million Subordinated Debenture between NRC and PRC.

Received from McMillan 9/9/76

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

NEWFOUNDLAND REFINING COMPANY LIMITED, and PROVINCIAL REFINING COMPANY LIMITED,

Plaintiffs,

-against-

ATAKA AMERICA, INC., ATAKA & CO., LTD., ATLANTIC TRADING (DELAWARE) CORP., and THE SUMITOMO BANK, LTD.

Defendants.

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STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

Robert M. Walsh, being duly sworn, deposes and says:

1. I am General Counsel to plaintiffs.

2. On February 13, 1976, I was told that representatives of Clarkson & Company Limited, the newly appointed Interim Receivers of plaintiffs assets, were in the office at 90 Park Avenue and I and Mr. Manning, special counsel to plaintiffs, went into the meeting. At the meeting Messrs. McColloch and Quinn from Clarkson arrived and were accompanied by Joseph Flom, Esq. and another attorney of Skadden, Arps and John McAttee, Jr., Esq. and another attorney of Messrs. Davis, Polk and Wardwell, both of whom identified themselves as counsel to the Interim Receiver. They were met by Mr. Manning and me, and when Clarksons requested the books and records of the plaintiffs and access to the bank accounts of plaintiffs, I informed them that plaintiffs did not recognize any extraterritorial effect of the Newfoundland Court, and consequently we were not prepared to accede to the demand of the Interim Receiver.

Exhibit (4)

Later on February 13, 1976 Messrs. McColloch and Quinn returned to 90 Park Avenue and again requested the books and records; they were permitted to review the stock record books and corporate minutes of plaintiffs.

On February 17, 1976, the next working day, Messrs. Hoover and Fisher of Clarkson arrived at 90 Park Avenue, accompanied by a Mr. Koegler and another attorney from Skadden, Arps. I met with them together with Mr. Furmark. After considerable discussion in which Mr. Koegler played an active role, plaintiff and Clarkson arrived at a voluntary arrangement whereby Clarkson would carry out, to a limited degree, the assignment it received from the court, initial draft of the agreement (Exhibit JJ to Furmark's supplemental affidavit of this date) was drafted by Mr. Koegler; after further discussion and negotiation, a final agreement was written and executed (Exhibit KK to Furmark's supplemental affidavit of this date). In the course of this discussion Mr. Koegler stated that his firm had, in connection with this matter, represented Morgan Stanley and Atlantic Trading and now represented the Interim Receiver and that his firm was in the process of trying to "sort out" their relationships.

Robert E. Walsh

Robert E. Walsh

Sworn to before me this
1st day of March, 1976

Maureen McPartland

MAUREEN McPARTLAND
NOTARY PUBLIC, State of New York
No. 41-2003100
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 1977

EXHIBIT I

At a Special Term, Part II, of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse at 60 Centre Street, in the Borough of Manhattan, City and State of New York, on the 24th day of March 1976.

PRESENT:

HON. ANDREW R. TYLER,
Justice

SNR HOLDINGS, INC., as sole stockholder of NEWFOUNDLAND REFINING COMPANY LIMITED, PROVINCIAL REFINING COMPANY LIMITED; and SHAHEEN NATURAL RESOURCES COMPANY, INC.,

Plaintiffs,

-against-

ATAKA AMERICA, INC., ATAKA & CO., LTD., ATLANTIC TRADING (DELAWARE) CORP., THE SUMITOMO BANK, LTD., MORGAN, STANLEY & CO., INC., CLARKSON & CO. LIMITED, CLARKSON GORDON & CO., KLEINWORT BENSON LIMITED and THE GOVERNMENT OF THE PROVINCE OF NEWFOUNDLAND AND LABRADOR,

Defendants.

ORDER TO SHOW CAUSE WITH TEMPORARY RESTRAINING ORDER

Index No. 03959/76

Upon reading and filing the affidavit of Richard deY. Manning, sworn to on the 24th day of March 1976, the exhibits annexed thereto, the summons and amended verified complaint herein, and all other papers previously filed herein, it is

ORDERED that the defendant, Clarkson & Co. Limited, or its attorneys, show cause before this Court at a Special Term, Part I thereof, to be held in and for the County of

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New York, at the Courthouse at 60 Centre Street, in the Borough of Manhattan, City and State of New York, on the 26 day of March 1976, at 9:30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, why an order should not be made:

1. Staying said defendant, its agents, attorneys and employees from taking any further action in the State of New York or interfering in any way with the business or assets of NRC or PRC, or their officers, located in the State of New York, (a) pursuant to the purported appointment of said defendant as Trustee in Bankruptcy by Order dated March 12, 1976 of the Provincial Court of Newfoundland; or (b) pursuant to the purported authority granted said defendant as Receiver under the First Mortgage on the PRC refinery at Come By Chance, Newfoundland, the Second Mortgage on the said refinery and under the First, Second and Third Debentures issued by PRC, until such time as said defendant's authority to act in such capacity is established by a court of competent jurisdiction in the State of New York, or in the alternative,

2. Vacating the stay granted by this Court with respect to the determination of the motions by the plaintiff for partial summary judgment against the defendant, The Sumitomo Bank, Ltd., and against the defendants, Ataka America, Inc. and Ataka & Co., Ltd., and it is further

Exhibit I

ORDERED, that pending the hearing and determination of this motion, said defendant, its agents, attorneys and employees be, and hereby are, enjoined and restrained from taking any further action in the State of New York or interfering in any way with the business or assets of NRC or PRC or their officers, located in the State of New York, (a) pursuant to the purported appointment of said defendant as Trustee in Bankruptcy by Order dated March 12, 1976 of the Provincial Court of Newfoundland; or (b) pursuant to the purported authority granted said defendant as Receiver under the First Mortgage on the PRC refinery at Come By Chance, Newfoundland, the Second Mortgage on the said refinery and under the First, Second and Third Debentures issued by PRC; and it is further

ORDERED, that service of a copy of this order, together with the papers upon which it is based, on or before 1 P.M. o'clock P.M. on the 23 day of March 1976, be deemed sufficient service.

Enter,

/S/ ART
J.S.C.

Exhibit I

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

----------X

SNR HOLDINGS, INC. as sole stockholder of NEWFOUNDLAND REFINING COMPANY LIMITED & PROVINCIAL REFINING COMPANY LIMITED; and SHAHEEN NATURAL RESOURCES COMPANY, INC.,

Plaintiffs,

against

ATAKA AMERICA, INC., ATAKA & CO. LTD., ATLANTIC TRADING (DELAWARE) CORP., THE SUMITOMO BANK LTD., MORGAN STANLEY & CO. INC., CLARKSON & CO. LIMITED, CLARKSON, GORDON & CO., KLEINWORT BENSON LIMITED and THE GOVERNMENT OF THE PROVINCE OF NEWFOUNDLAND AND LABRADOR,

Defendants.

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AFFIDAVIT

Index No. 03959/76

STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

RICHARD deY. MANNING, being duly sworn, deposes and says:

(1) I have acted as attorney in this matter, and I am familiar with the matters dealt with herein.

(2) On March 18, 1976, the Clarkson & Company Limited ("Clarkson"), a defendant herein, moved this Court by means of an ex parte order to show cause for the following relief:

> "...why an order should not be made pursuant to Rule 1017 of the Civil Practice Law and Rules substituting the Clarkson Company Limited, as trustee in bankruptcy for Provincial Refining

Company Limited and Newfoundland Refining Limited as the plaintiff in this action and staying all proceedings in this action pending determination of this motion and for such other and further relief as may be necessary to preserve the assets of the estate of Provincial Refining Company Limited and Newfoundland Refining Company Limited and to ensure the equitable administration of the bankruptcy proceedings presently pending before the Supreme Court of the Province of Newfoundland and for such other and further relief as to this Court may seem just and proper."

(3) At the hearing on March 19, 1976, on the motion of Clarkson this Court stayed the proceedings herein pending a decision by the Court on Clarkson's motion.

(4) On March 23, 1976, Clarkson instituted an action in the Federal Court, again by ex parte order to show cause seeking injunctive relief against certain named individuals, all of whom are officers of the defendant corporations or officers of NRC and PRC, seeking the following relief:

"1. Enjoining defendants and their agents, servants, employees and attorneys, and other persons in active participation with them who receive actual notice of the Order, from destroying, altering, secreting or removing any books or records of NRC or PRC;
"2. Requiring defendants and their agents, servants, employees and attorneys, and other persons in active participation with them who receive actual notice of the Order, to deliver immediately into the possession and control of plaintiff, The Clarkson Company Limited, as Trustee in Bankruptcy, and its agents ("Clarkson"), all books and records of NRC and PRC;

Exhibit I

"Enjoining defendants and their agents, servants, employees and attorneys, and other persons in active participation with them who receive actual notice of the Order, from disposing, disbursing, secreting or removing any property of NRC and PRC;
"4. Requiring defendants and their agents, servants, employees and attorneys, and other persons in active participation with them who receive actual notice of the Order, to deliver into the possession and control of Clarkson all property of NRC and PRC; and
"5. For such other and further relief as to the Court may seem just and proper."

(5) Pending a hearing on the relief sought the Court entered the following order; the named defendants

"(1) Are restrained from transferring any of the books and records of NRC and PRC from their present location and from destroying, altering or secreting any of the books and records of NRC and PRC;
"(2) Are directed to give Clarkson immediate and continuing access to the books and records of NRC and PRC with the right to inventory, examine and copy; and
"(3) Are restrained from disbursing, removing or secreting any other property of NRC or PRC in their custody or control."

(6) It would appear that the relief sought in the Federal Court overlaps to a large extent, the relief which has been requested of this Court.

(7) This Court is aware of the appointment of another Trustee, Coopers, Lybrand Limited ("Coopers"), by the Official Receiver under the Bankruptcy Act of Canada, prior to the appointment of Clarkson by the Provincial judge. The Court is also aware of the discrepancy between the requirements of the Canadian Bankruptcy Act and the order of Judge Mifflin

of March 12, 1976. Attached hereto as Exhibit (A) is a letter from Coopers explaining what steps are being taken in the Canadian Courts to sort out the "case of the two Trustees".

Stay of Clarkson

(8) Under the principle that "he who seeks equity must grant equity", it would seem only proper that this Court should grant a stay against Clarkson from taking any further action in the State of New York or interfering in any way with the business or assets of NRC or PRC or their officers, located in the State of New York, (a) pursuant to the purported appointment of Clarkson as Trustee in Bankruptcy by Order dated March 12, 1976, of the Provincial Court of Newfoundland; or (b) pursuant to the purported authority granted Clarkson as Receiver under the First Mortgage on the PRC refinery at Come By Chance, Newfoundland, the Second Mortgage on the said refinery and under the First, Second and Third Debentures issued by PRC until such time as Clarkson's authority to act in such capacity is established by a Court of competent jurisdiction in the State of New York.

The reason such stay is sought is that (a) until Clarkson has established its authority by Court order it has no authority to act in New York. The Canadian Bankruptcy Laws do not spill, "willy nilly", across the U.S. border (see cases cited in my Memorandum of Law dated March 19, 1976); and (b) following Clarkson's obtaining of the ex parte order from

the Federal Court referred to above, it has been harrassing the families of the defendants named in the Federal action by late evening telephone calls and other annoyances under the guise of trying to serve such persons with the Court's Order. Clarkson well knows where these people are located as it has been occupying the same offices with them since February 17, 1976.

It is not believed that such an Order of this Court would in any way conflict with the Order of the Federal Court.

(9) This dual and somewhat inexplicable action of Clarkson raises certain intriguing legal questions. What happens if this Court holds Clarkson is not the properly appointed Trustee in the Canadian proceedings, and the Federal Court holds that they are the proper Trustee or vice versa?

(10) A far more serious question will be presented if Clarkson is granted the relief it seeks in this action and the Canadian Courts subsequently stay or vacate the order of Judge Mifflin appointing Clarkson. Who is to be responsible for the possible mishandling of this case in the meantime? In spite of Mr. Barist's faith in the judgment of White & Case, I do not share it. It would appear that a bond of at

least $50 million should be required to protect SNR Holdings, Inc. against Clarkson as Trustee deciding to drop the case against Clarkson, as defendant co-conspirator, and the case against the other co-conspirators who caused Clarkson's appointment.

(11) The foregoing examples are mentioned merely to point out the absurdity of the application presently before this Court for substitution of Clarkson as a plaintiff in this action.

(12) It would appear that this case, a derivative stockholders suit, is no different from other actions where two or more conflicting derivative or other suits are filed with respect to the same corporation (see e.g., In. Re. Elias, 29 A.D. 2nd 118, 286 N.Y.S. 2d 371 (2nd Dept., 1967)). The Court cannot accept the course of action proposed for the corporation by either one until all are heard. Under such circumstances, Clarkson would not bear the heavy burden of sitting alone in judgement on its own misdeeds, and those of its co-conspirators.

(13) Plaintiff has no objection whatsoever to Clarkson being in this case -- they are already in it as a co-defendant -- their views on all of the subjects herein would be welcomed, including their supplying information as to how they knew in advance that Judge Mifflin was going to appoint them Trustees

in Bankruptcy on March 12, 1976. It appears that in such capacity, Clarkson closed NRC's Ottawa office before Judge Mifflin had entered his decision in St. John's, Newfoundland (ESP perhaps?).

(14) Another problem presented by the Motion of Clarkson is that it does not make clear what it wants this Court to do. The section of the CPLR cited in support of the motion, §1017, deals with the situation where a Receiver has been appointed for a party to a pending action (incidentally a Receiver appointed by a New York Court); under such circumstances the Court will hear an application to substitute the Receiver for the party to the action. NRC and PRC are not, strictly speaking, parties to this action. The action was brought by SNR Holding, Inc., a U.S. corporation, over whom the Canadian Courts have no jurisdiction whatsoever. Certainly there is no authority of which I am aware permitting substitution of a foreign Receiver for a U.S. corporation who is a party to the action under the circumstances of this case. Counsel for Clarkson has cited none.

Vacation to Stay Re Motions for Summary Judgment

(15) Turning to the more immediate problem of the stay requested by Clarkson and granted by the Court, the motions for summary judgment against The Sumitomo Bank, Ltd.

("Sumitomo") and Ataka. These motions were made in an effort to enhance the estate of the debtors, an estate which Clarkson claims to be interested in protecting. What possible harm could come from having the Court proceed on these motions?

(16) On the merits of the Sumitomo motion for summary judgment, it appears beyond question that Sumitomo fraudulently took $3.5 million from PRC's bank account and has no defense whatsoever to such action. The bank took PRC's money under claim of setoff -- it thus has the burden of proving such action to have been proper. Sumitomo has offered nothing to justify its action. The bill of exchange it belatedly produced in this Court,allegedly received by assignment from Atlantic Trading, was past due, it was payable July 29, 1975 -- so Sumitomo cannot claim to be a holder in due course. Consequently the "setoff" is not permitted as there exists a valid defense to Sumitomo's claim as assignee of this bill of exchange: that is, the bill of exchange was transferred as part of a conspiracy to violate Section 489 of the Judiciary Law and consequently cannot be enforced in New York.

(17) The more salient point is, however, that Sumitomo is guilty of an obvious fraud on this Court by producing the bill of exchange which it claims it used for the purpose of

the "setoff" in question. This bill of exchange is a "red herring" of the worst sort. It smells to high heaven of fraud. Mere reference to the bank statement of PRC, which was prepared and delivered to PRC by Sumitomo, belies the claim of Sumitomo that it used the bill of exchange for purposes of "setoff". The bank statement which is the instrument for the payment of money on which the summary judgment is based, clearly states as follows:

"2/13/76 Partial Repayment Loan 1204 [$]2,637,926.85"

"2/20/76 Part Loan Repay # 1205 [$] 905,739.52"

A bill of exchange is not a loan; neither one of the above numbers 1204 or 1205 appears anywhere on the bill of exchange produced for the Court (but not the plaintiffs) by Sumitomo.

(18) The plain fact is, the money was fraudulently taken by Sumitomo, more accurately, stolen by Sumitomo, to pay a loan due to some other borrower from that bank, most likely Ataka to whom PRC owed not one red cent by Ataka's own admission. It had assigned all of its claims against PRC to Atlantic Trading (Delaware) Corp. ("Atlantic Trading").

(19) When Sumitomo was caught with its "hand in the till", like most malfactors it tried to cover up its actions apparently by hurriedly having Atlantic Trading do a nunc pro tunc assignment of the bill of exchange. THE COURT'S ATTENTION

IS CALLED TO THE FACT THAT NO DATES APPEAR ON THE ENDORSEMENTS ON THE BILL OF EXCHANGE FROM ATLANTIC TRADING TO SUMITOMO. This fast "shuffling" of the bill of exchange appears to be nothing more than a Japanese version of the old shell game, but the question still remains unanswered: Which borrower was under the shells marked #1204 and #1205?

(20) Sumitomo, with the active assitance of Clarkson (its alleged co-conspirator) in getting a stay of the motion is successfully stalling a hearing on this motion for summary judgment, and is fighting with everything it has to avoid disclosure of the damning fact that it applied the funds of PRC to pay a loan by some borrower to whom PRC owes not a penny. It is certainly obvious that if Clarkson is allowed to come into this matter and have any control of it whatsoever, they will hardly "bite the hand" that appointed them and force disclosure of an act which will be so damning to Sumitomo (which is behind this whole operation).

(21) Under Section 626 of the BCL, if a summary judgment is granted, as to which there is little doubt, the funds so recovered must be accounted for under the supervision of this Court and are to be available first to New York creditors, before any distribution in Canada. It has long been held that foreign bankruptcy orders do not affect assets located in the United States (see my Memorandum of Law dated March 21, 1976).

(22) The same might be said about the summary judgment motion against Ataka. Why does Clarkson want this motion stayed when it must be granted, at least in part, on the basis of admissions by Ataka. Under the affidavit filed herein by Mr. Kobayashi, Ataka does not even deny it collected $1.5 million from PRC to which it was not entitled. The affidavit goes to great lengths to explain that the debentures on which the payment was made were all assigned on January 30, 1976. No explanation whatsoever is offered in defense as to the $1.5 million which was fraudulently accepted by Ataka on February 6, 1976, one week after it had made an assignment of all of the remaining claims it had against PRC to Atlantic Trading. By Ataka's own admission it owes PRC $1.5 million, which should be paid over immediately. Does it appear that Clarkson is really acting in the best interests of the debtors in preventing this money, which is clearly owed, being paid over?

(23) Mr. Baris stated to the Court as follows:

> "Now I want control of this lawsuit for one reason, and one reason only. If there is a meritorious claim, then by God White & Case does not need instructions from Mr. Manning as to what to do with it."

While I do not blame Mr. Barist for not wanting someone to look over his shoulder while he makes his decision as both plaintiff and defendant in this case, I do not believe

that the State Courts of New York will permit him such a luxury. It is somewhat difficult to imagine the attorneys from White & Case, as counsel to Clarkson, as Trustee plaintiff, subjecting the President or other officers of Clarkson, as co-conspirator defendant, to a scathing cross-examination and securing admissions of their guilt and wrongdoing.

Richard deY. Manning

Sworn to before me
this 24th day of March, 1976.

Notary Public

MELANIE M. MALOS
Notary Public, State of New York
No. [illegible]
Qualified in New York County
Commission Expires March 30, 1978

Exhibit I

COOPERS & LYBRAND LIMITED

196

OFFICES IN PRINCIPAL CITIES OF CANADA

TRUSTEE IN BANKRUPTCY

Telephone (902) 425-6190
Suite 410 Duke St. Tower
Scotia Square-Halifax, N.S.

March 23, 1976.

Mr. Richard deY. Manning,
Messrs. Manning, Carey & Redmond,
Attorneys at Law,
122 East 42nd Street,
New York, N.Y. 10017.

Dear Mr. Manning:

Re: Newfoundland Refining Corp. Limited
Provincial Refining Corp. Limited

Coopers & Lybrand Limited is a licensed trustee under the Bankruptcy Act of Canada.

A petition for a bankruptcy order was filed in the Supreme Court of Newfoundland on 13 February 1976 and resulted in a bankruptcy order dated 12 March 1976. Before the bankruptcy order was made a proposal to creditors was filed with the court hearing the bankruptcy petition. We were named as the trustee in that proposal. The Bankruptcy Act of Canada provides that upon the filing of a proposal all proceedings are stayed. The trial judge ruled that this provision had no application to a petition in bankruptcy. We are advised that decided cases indicate the contrary. The trial judge cited no case in support of his decision. It is the opinion of our counsel that there was no jurisdiction to make the bankruptcy order in the face of the proposal.

We have commenced proceedings in the Supreme Court of Newfoundland to have the bankruptcy order rescinded and for directions with respect to the further conduct of the proposal. Furthermore, an appeal has been launched by the debtor companies against the bankruptcy order and an application to stay its operation has been made, which will be determined shortly.

Pending resolution of the issues outstanding in Canada we are advised by counsel that we should not attempt to intervene in proceedings in the State of New York.

Yours very truly,

Robert H. Bruce.

/vp

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

In Re

PROVINCIAL REFINING COMPANY LIMITED :
and
NEWFOUNDLAND REFINING COMPANY LIMITED

Bankrupts. :

THE CLARKSON COMPANY LIMITED, as Trustee in Bankruptcy, appointed by the Supreme Court of the Province of Newfoundland, of the property of Newfoundland Refining Company Limited and Provincial Refining Company Limited, : 76 Civ. 1373

Plaintiff,

against

JOHN M. SHAHEEN, ROY M. FURMARK, ALBIN W. SMITH, PHILIP GANDERT, PETER L. CARAS, PAUL W. RISHELL, WILLIAM J. SHERIDAN, and JOHN DOE, :

Defendants. :

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MEMORANDUM OF LAW

This action (herein the "Federal Action") was instituted by plaintiff on March 23, 1976, against the individual defendants, all officers and/or directors of Newfoundland Refining Company Limited ("NRC") or Provincial Refining Company Limited ("PRC") by an ex parte Order to Show Cause and Temporary

Restraining Order. The Temporary Restraining Order was improperly entered in violation of FRCP 65 for the reasons stated in the affidavit herein of Richard deY. Manning sworn to on March 25, 1976.

Prior to the institution of this action, plaintiff, already a defendant in a derivative stockholders action brought on behalf of NRC and PRC in the Supreme Court, New York County (SNR Holdings, Inc. et al v. Ataka America, Inc. et al, Docket 03959/76) (herein the "State Action"), made application by ex parte Order to Show Cause dated March 18, 1976 to the Court, to be substituted for the plaintiff on the grounds that it was the Trustee in bankruptcy for NRC and PRC. A copy of the Amended Verified Complaint in the State Action is attached as Exhibit A and the Motion papers of plaintiff therein are attached as Exhibit B.

The question in the State Action is whether Clarkson is the proper party to control a res in New York -- i.e., the lawsuit brought to protect the rights of NRC and PRC.

The question in the Federal Court action is whether Clarkson should have control and possession of the tangible and intangible assets of NRC and PRC. including the very books and records on which the State Action is based.

Thus, the question in each action involves control of assets and books and records of NRC and PRC located in the

State of New York -- a pure question of State law and, in essence, a question of in rem jurisdiction.

In the State Action, Clarkson seeks an order substituting itself as plaintiff in the case in which SNR Holdings, Inc. is plaintiff, on behalf of NRC and PRC, and Clarkson is a co-defendant:

> "...and for such other and further relief as may be necessary to preserve the assets of the estate of Provincial Refining Company Limited and Newfoundland Refining Company Limited...." (Emphasis added)

In the Federal Action, Clarkson seeks an order against the New York directors and officers of NRC and PRC:

> Enjoining the defendants from "...destroying, altering, secreting or removing any books or records of NRC or PRC" or "...disposing, disbursing, secreting or removing any property of NRC and PRC."
>
> Requiring the defendants to deliver to Clarkson "...all books and records of NRC and PRC..." and "...all property of NRC and PRC."

Thus, the State Action asked for relief necessary to "preserve the assets" of NRC and PRC, and the Federal action requests that such assets be preserved from destruction and turned over to Clarkson.

Also, the same books and records on which the State Action is based are demanded in the Federal action.

The "virtually mechanical" rule concerning in rem or quasi in rem actions pending in the State and Federal Courts has been stated thus:

> "Where federal action and a parallel state action involving the same controversy are both proceedings in rem or quasi in rem, so that the granting of effective relief requires possession or control of the res, the court which first assumes jurisdiction acquires exclusive jurisdiction and deprives the other court of power to decide the case. Princess Lida of Thurn and Taxis v. Thompson, 1939, 305 U.S. 456....PPG Industries Inc. v. Continental Oil Company, 478 F.2d 674, 677 (5th Cir. 1973) (Emphasis added)

> "...[The State] court, whose jurisdiction first attached, retains jurisdiction over this matter to the exclusion of all other courts -- certainly to the exclusion of the Federal District Court -- until its duty has been fully performed." Wilson v. Schnettler, 365 U.S. 381 Reh den. 365 U.S. 890 (1961).

The Court cited and followed Harkrader v. Wadley, 172 U.S. 148 (1898) which held

> "...this rule applies alike in both civil and criminal cases." (172 U.S. at 164)

In this action, a pure question of New York State law is presented -- that is, does comity require recognition of a Newfoundland Trustee whose standing is challenged in Canada and in New York, and who has been named as a co-conspirator in a scheme which was designed to, and did, culminate in the bankruptcy proceedings against NRC and PRC?

It is established that actions, orders, and appointments by foreign bankruptcy courts have no legal standing in the Courts of the United States or New York:

(a) Foreign discharge in bankruptcy is no defense in a United States action or contract. McMillan v. McNeill, 17 U.S. 209 (1919), per Marshall, C.J. Phelps v. Borland, 103 N.Y. 406 (1886).

(b) Foreign appointment of a Receiver, Trustee, or other similar functionary gives him no legal standing in New York. What standing may be granted, is by way of comity only. Oakey v. Bennett, 52 U.S. 33 (1851); In re Waite, 99 N.Y. 433 (1885); Vladikavkazsky Ry. Co. v. New York Trust Co. 263 N.Y. 369 (1934); Koninklijke Lederfabriek "O" v. Chase Nat. Bank, 30 N.Y.S. 2d 518 (1st Dept. 1941).

(c) Canadian bankruptcy orders and other judgments are not per se entitled to comity. Bank of Buffalo v. Vesterfelt, 232 N.Y. S. 2d 783 (Co. Ct. Erie Co. 1962).

The case appears to fall squarely within the decision of Railroad Commission v. Pullman, 312 U.S. 496 (1941), which held that a federal court should require unsettled questions of state law to be determined by state courts wherever possible. Justice Frankfurther expressed the Court's view as follows:

> "Had we [the Supreme Court] or they [the Circuit Court and District Court] no choice in the matter but to decide what is the law of the state, we should hesitate long before rejecting their forecast of Texas law. But no matter how seasoned

> the judgment of the district court may be it cannot escape being a forecast rather than a determination. The last word... [on the state question] belongs neither to us nor to the district court but to the Supreme Court of Texas. In this situation a federal court of equity is asked to decide an issue by making a tentative answer which may be displaced tomorrow by a state adjudication. The reign of law is hardly promoted by an unnecessary ruling if a federal court is thus supplanted by a controlling decision of a state court...." (312 U.S. at 499-500; emphasis added and citations omitted)

The court remanded the case with directions to retain the case pending a determination of a proceeding to be brought with reasonable promptness in the state court.

The discretionary action in the foregoing case, was held to be compelling in City of Chicago v. Fieldcrest Dairies, 316 U.S. 168 (1942), per Justice Douglas:

> "In this case...discretion calls for a remission of the parties to the state courts which alone can give a definitive answer to the major questions posed. Plainly they constitute the more appropriate forum for the trial of those issues....we are here concerned with the much larger issue as to the appropriate relationship between federal and state authorities functioning as a harmonious whole.
>
> "The desirability of the course which we have suggested is not embarrassed by any question as to whether ready recourse may be had to the state courts. The availability of the state tribunal is obvious, since a case involving substantially identical issues and brought by respondent's parent corporation is pending in the state court." (316 U.S. at 172-73)

See also, Meredith v. City of Winter Haven, 320 U.S. 7 (1943):

> "It is the court's duty to do so [stay its proceedings], when a suit is pending in the state courts, where the state questions can be conveniently and authoritatively answered, at least where the parties to the federal court action are not strangers to the state action. City of Chicago v. Fieldcrest Dairies, 316 U.S. 168...."

Here the question of whether or not to grant comity to the Newfoundland Court's purported appointment of Clarkson as Trustee of NRC and PRC is a decision to be decided by the New York Courts; the question is presently before the New York Courts and this Court should stay or dismiss this action pending decision by the New York Courts.

Respectfully submitted,

MANNING, CAREY & REDMOND
Attorneys for Defendants
122 East 42nd Street
New York, New York 10017
(212) 867-1040

Richard deY. Manning
Of Counsel

C 199—Summons without Notice. Supreme Court. Individual Personal Service.

EXHIBIT A

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80 EXCHANGE PL. AT BROADWAY, N. Y. C. 10004

Supreme Court of the State of New York

County of NEW YORK

Index No. 03959/1976 204

SNR HOLDINGS, INC. as sole stockholder of NEWFOUNDLAND REFINING COMPANY LIMITED & PROVINCIAL REFINING COMPANY LIMITED; and SHAHEEN NATURAL RESOURCES COMPANY, INC.,

Plaintiff s

against

ATAKA AMERICA, INC., ATAKA & CO., LTD., ATLANTIC TRADING (DELAWARE) CORP., THE SUMITOMO BANK, LTD., MORGAN, STANLEY & CO., CLARKSON & CO. LIMITED, CLARKSON, GORDON & CO., KLEINWORT BENSON LIMITED and THE GOVERNMENT OF THE PROVINCE OF NEWFOUNDLAND AND LABRADOR,

Defendant s

Plaintiff designates NEW YORK *County as the place of trial*

The basis of the venue is Place of residence of Plaintiffs

Summons

Plaintiff resides at 90 Park Avenue New York, New York 10016

County of COUNTY OF NEW YORK

To the above named Defendant

You are hereby summoned *to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.*

Dated,

Defendant's address:

SEE ATTACHED LIST

MANNING, CAREY & REDMOND
*Attorney(s) for Plaintiff*s

Post Office Address
122 East 42nd Street
New York, New York 10017
(212) 867-1040

Exhibit A

Ataka America, Inc.
633 Third Avenue
New York, New York 10016

Ataka & Co., Ltd.
6-1 Ohtemachi, 1-chome
Chiyoda-ku
Tokyo, Japan

Atlantic Trading (Delaware) Corp.
633 Third Avenue
New York, New York10016

The Sumitomo Bank, Ltd.
One World Trade Center
New York, New York

Morgan Stanley & Co., Inc.
1251 Avenue of the Americas
New York, New York

Clarkson & Co. Limited
90 Park Avenue
New York, New York 10016

Clarkson, Gordon & Co.
Toronto, Ontario
Canada

Kleinwort Benson Limited
20 Fenchurch Street
London E. C. 3, England

The Government of the Province of
Newfoundland & Labrador
Confederation Building
St. John's, Newfoundland

Exhibit A

SUPREME COURT, STATE OF NEW YORK
COUNTY OF NEW YORK

----------X

SNR HOLDINGS, INC. as sole stockholder of NEWFOUNDLAND REFINING COMPANY LIMITED & PROVINCIAL REFINING COMPANY LIMITED; and SHAHEEN NATURAL RESOURCES COMPANY, INC.,

Plaintiffs,

-against-

ATAKA AMERICA, INC., ATAKA & CO., LTD., ATLANTIC TRADING (DELAWARE) CORP., THE SUMITOMO BANK, LTD., MORGAN, STANLEY & CO., INC., CLARKSON & CO. LIMITED, CLARKSON, GORDON & CO., KLEINWORT BENSON LIMITED and THE GOVERNMENT OF THE PROVINCE OF NEWFOUNDLAND AND LABRABOR,

Defendants.

AMENDED VERIFIED COMPLAINT

Index No. 03959/76

----------X

Plaintiffs, through their attorneys, Manning, Carey & Redmond, complaining of the defendants herein, allege as follows:

1. This action is brought by SNR Holdings, Inc. ("SNR Holdings"), a Delaware corporation, licensed to do business in New York under BCL §626, as the present sole stockholder of Newfoundland Refining Company Limited ("NRC") and Provincial Refining Company Limited ("PRC"), and which has been the sole stockholder at all relevant times herein. This action is brought by plaintiff because of the existence of an ex parte restraining order of the Supreme Court of Newfoundland enjoining the bringing of such action based upon the Application of defendant Atlantic Trading (Delaware) Corp. in violation of a forum selection clause binding the parties to hear all disputes in the Courts of New York (see par. 12 herein).

2. (a) NRC is a Newfoundland, Canada, corporation, with its principal office in St. John's, Newfoundland, licensed to do business in New York.

(b) PRC is a Newfoundland, Canada, corporation, with its principal office in St. John's, Newfoundland, licensed to do business in New York.

3. Plaintiff Shaheen Natural Resources Company, Inc. ("Shaheen") is an Illinois corporation licensed to do business in New York; Shaheen owns 79% of SNR Dover, Inc., a Delaware corporation which owns 100% of the stock of plaintiff SNR Holdings.

4. Defendant Ataka America, Inc. is, on information and belief, a New York corporation, with its principal place of business in New York City, New York; at all relevant times herein, said defendant was the alter ego and agent of defendant Ataka & Co., Ltd., and both acted as one entity.

5. On information and belief, defendant Ataka & Co., Ltd., is a Japanese corporation, which has been in business in New York City since 1956 and is not licensed to do business in New York (defendant Ataka America, Inc. will be referred to herein as "Ataka America" and Ataka & Co., Ltd. will be referred to herein as "Ataka Japan", and the two companies will be referred to collectively as "Ataka".

6. On information and belief, defendant Atlantic Trading (Delaware) Corporation is a Delaware corporation, with a principal office in New York City; which purports to be an assignee of all assets and liabilities arising out of the dealings between Ataka and plaintiffs', references to Ataka shall include said

defendant after it became Ataka's assignee; PRC and NRC were notified of the assignment on or about February 6, 1976.

7. On information and belief, defendant The Sumitomo Bank, Ltd. ("Sumitomo Bank") is a banking corporation, incorporated under the laws of Japan, with an agency in New York City.

8. On information and belief, defendant Morgan, Stanley & Co., Inc., ("Morgan Stanley") is a corporation, the state of incorporation of which is not known; its principal place of business is in New York City.

9. On information and belief, defendant Clarkson & Co. Limited ("Clarkson"), is a corporation organized under the laws of a Province of Canada, which is doing business in New York.

10. On information and belief, defendant Clarkson Gordon & Co. ("Clarkson Gordon"), is a partnership organized under the laws of a Province of Canada, which is doing business in New York, and owns the stock of Clarkson & Co.

11. On information and belief, defendant Kleinwort Benson Ltd. ("Kleinwort") is a United Kingdom corporation and has an office and is engaged in business in New York.

12. On information and belief, defendant Government of the Province of Newfoundland, Canada ("Provincial Government") is a soverign government, which acted in purely a commercial non-governmental capacity in all matters herein described, and has a New York agent.

13. Plaintiff PRC owns a oil refinery at Come-By-Chance, Newfoundland, Canada, which refinery, by contractual agreement was supplied crude oil by NRC at its cost.

14. At all relevant times herein, defendants, Ataka conducted a world-wide trading operation, engaged in all phases of international purchasing and sale of raw materials of all types and otherwise engaged in all forms of international commerce.

15. In 1972, when it appeared that additional financing was required to complete the refinery, Ataka agreed to provide $15,000,000 for such purposes to be secured by a first mortgage. Ataka was at that time acting as a broker between NRC and Sanko Steamship Company for a long term charter of one VLCC vessel and a short term contract of affreightment. As part of the added financing, Ataka required that these arrangements be cancelled and that NRC enter into three VLCC charter parties with Sanko, on which Ataka would act as broker at a fee of $250,000 per year. Ataka performed substantially no services for such fee.

16. By an "Agency Agreement", dated September 20, 1973, between NRC and defendants Ataka (Exhibit A hereto):

(a) Ataka was appointed by NRC "as its exclusive purchase and sales agent for ALL THE CRUDE OIL contracted by NRC with its suppliers to sell to Provincial Refining (plaintiff PRC)..."; and Ataka agreed to purchase all crude oil contracted for by NRC in accordance with the terms of the BP Trading contract including the furnishing of Letters of Credit required under the said BP Trading contract, for which Ataka was to be paid a commission on all such purchases.

(b) Ataka was to make payment for all crude oil supplied to NRC, with NRC being responsible to Ataka for all of such payments in the manner hereinafter described;

(c) All sales of crude oil by NRC to PRC and receipts of payments therefor were to be executed by Ataka for and on behalf of NRC, with such funds being used by Ataka to pay the supplier of such crude oil;

(d) Ataka "as agent of NRC" agreed to extend to NRC credit facilities of Ataka for any advance to be made to NRC's crude oil supplier for the crude oil to be supplied to PRC. The agreement also provided that it was Ataka's intention "to enable NRC to overcome start-up difficulties in the initial start-up stage until the refining operation has reached the normal scheduled production stage." For advances made by Ataka to NRC's crude oil supplier, NRC agreed to issue promissory notes to Ataka "according to the repayment terms and conditions to be agreed...";

(e) The parties agreed that such agreement would continue in effect for at least ten years or until all indebtedness of NRC to Ataka had been repaid, whichever was longer.

17. The Agency Agreement contained the following provision:

> "This agreement shall be construed in accordance with the laws of the State of New York and any dispute arising between the parties shall be submitted for determination by a New York Court." (Emphasis added.)

18. (a) By separate Supplementary Agreement, dated September 20, 1973, Ataka agreed to a loan of $42,000,000 to NRC; such loan was to be represented

by NRC's unsecured promissory notes maturing June 30, 1985, this Agreement incorporated by reference inter alia the above quoted forum selection clause.

(b) By a separate Loan Agreement dated November 17, 1972, Ataka loaned PRC $15,000,000 secured by a First Mortgage on the refinery. That Agreement provided:

> "14(a). This Agreement shall be construed and the relations among the parties with respect hereto shall be determined in accordance with the laws of the State of New York."

19. Following execution of the Agency Agreement and the Supplementary Agreement on September 20, 1973, the Israeli-Arab war erupted in October 1973 and was followed by the Arab oil embargo on October 16th. From October 1, 1973 to April 1, 1974, by reason of the concerted actions of the OPEC countries, the world price of crude oil increased phenomenally. The contract price of the crude oil purchased by NRC increased during such period from $2.293 per barrel on October 1, 1973, to $10.80 per barrel on November 1, 1974, and then to $11.77 on October 1, 1975. This, of course, necessitated a similar increase in the credit to be supplied by Ataka for the purchase of the crude oil required by NRC. These increases in crude oil price increased the credit required for 100,000 barrels per day for 150 days (the credit allowed on the crude oil) from the $34,000,000

contemplated in September 1973, to $162,000,000 by November 1, 1974. When there are added the $42,000,000 advance of Ataka to NRC and the $15,000,000 first mortgage loan, the present agreed level of financing reached $219,000,000. When the operating difficulties and product price reductions mentioned in the following paragraphs ₣19 and ₣20 were experienced by the refinery, Ataka "rolled over", i.e., extended for one year certain of the Bills of Exchange which had been issued by the crude oil supplier pursuant to the Ataka Letters of Credit with an understanding that additional extensions would be granted if needed.

20. In the Agency Agreement Ataka recognized and agreed that the sole source of funds from which the Ataka credits were to be and could be paid was a specific bank account of NRC to be administered by Ataka as follows (Art. II):

> "d) Payment to BPT and/or any other supplier shall be made by ATAKA out of the account referred to in e) below as agent only and NRC shall be solely responsible to ATAKA to refund any advances or payments made including all charges and expenses, legal fees, stamp duties and taxes of all nature incurred by ATAKA during the course of executing the terms and conditions of the crude oil contract.
>
> e) All sales to Provincial Refining and the receipt of payments according to the sales contract by and between NRC and Provincial Refining shall be executed by ATAKA for and on behalf of NRC. All sums so received by ATAKA shall be kept in an account with a prime bank or banks in New York designated by ATAKA to be used solely for the payments to BPT and or any other supplier."

21. By reason of the foregoing described arrangement Ataka was the sole supplier of the crude oil to the refinery and Ataka was to effectuate the sale of such crude oil from NRC to PRC, at the F.O.B. cost thereof; when PRC made payment for such crude oil to NRC the funds were to be paid into the bank account referred to in Article II(e) of the Agency Agreement and were to be the source, and the only source, specified in the Agency Agreement, of payments to BP Trading for crude oil. Thus, the Agency Agreement makes clear that it was the credit of PRC that Ataka was relying upon for payment to it for crude oil purchased and not the credit of NRC. The $42,000,000 advanced to NRC by Ataka against the NRC promissory notes due June 30, 1985, obviously was to be paid from some other source as NRC did not, at that time, have any source of funds other than the funds placed in the Article II(e) bank account administered by Ataka.

22. In early 1974 Ataka and PRC made PRC a direct party to the Agency Agreement by directing the bills of exchange issued under the letters of credit to PRC for acceptance and thus making PRC primarily liable to Ataka rather than being indirectly liable through NRC as originally provided in the Agency Agreement.

23. The arrangements for the payment of funds advanced by Ataka to NRC, i.e., solely from payments by PRC, which in turn, could derive revenues only from the sale of products refined from such crude, followed established financing arrangements between Ataka and plaintiff Shaheen, the parent company of NRC and PRC. Starting in 1972 and continuing into 1975, Ataka and Shaheen engaged in a series of negotiations in connection with many new ventures to be financed by Ataka. From these negotiations, there resulted documented proposals, many of which were executed, and many others of which were agreed to in principle with documents being drafted, which, in the aggregate, committed Ataka to finance in excess of two billion dollars of business ventures with Shaheen or its subsidiaries, all of which contemplated payment to Ataka solely from the earnings of the particular venture involved. The major ventures which Ataka undertook to finance for Shaheen were:

(i) The purchase by Shaheen of 45,000 barrels per day of Malaysian and Arabian crude oil; the one year's credit to be provided by Ataka amounts to approximately $200,000,000; this agreement was executed, and partially performed by Ataka;

(ii) The participation in the development, exploration or purchase of crude oil reserves and crude oil in Alaska, the Far East, Shaheen's interest in the Canadian Athabasca oil sands, and the North Sea; all of these ventures involved a

estimated total commitment by Ataka of at least $100,000,000; this agreement was executed.

(iii) The purchase of crude oil for the 200,000 barrels per day expansion of the Come-By-Chance refinery, which would have required credit of $400,000,000; a telex agreement was made.

(iv) The acquisition of the iron ore deposits at Julian Lake Labrador by a Canadian company to be owned 49% by Ataka and 51% by Shaheen, and to finance the plant and equipment necessary for the mining and pelletizing of the ore; in addition to financing the project, Ataka undertook to sell the pelletized ore; according to Ataka's studies, the overall project involved an investment of $56,000,000; not only was this project the subject of a written agreement between Ataka and Shaheen but also was the subject of favorable negotiations between the Newfoundland Government and Ataka; the project has been delayed due to litigation in Newfoundland.

(v) A loan by Shaheen to Pertamina, the State owned oil company of Indonesia, and Letters of Credit for the purchase by Shaheen of 100,000 barrels per day of crude oil from Pertamina, which would have required approximately $415,000,000; following the agreement between SNR and Ataka, Shaheen proceeded to execute, with Ataka's consent, a contract with Pertamina based on Ataka's undertaking to provide the financing.

(vi) The purchase of 200,000 barrels per day of crude oil for the Nova Scotia Chemical refinery now under development, the credit for which would amount to $180,000,000 plus a loan by Ataka to Shaheen of $80,000,000. In addition, Shaheen agreed to sell all crude oil in excess of the two refinery's requirements through Ataka. An agreement in principal was reached and the agreement drafted.

(vii) A jointly owned Liberian company (50% each) to take over two or three Very Large Crude Carriers; Ataka's 50% commitment was $15,000,000; agreement in principle was reached and the agreement drafted; the corporation "Ataka Shaheen Navigation Company Ltd." was chartered by Shaheen at Ataka's request.

24. The PRC refinery was partially completed in December, 1973, in substantial breach of the contractual commitment of the construction contractor to complete it early in 1973; many portions of the plant were not completed. Attempted start-up disclosed many design and construction errors which have prevented completion and acceptance up to the present time. Shaheen, NRC and PRC have instituted a civil action in the Supreme Court of New York County for $189,000,000 in damages against UOP, Inc., the company which designed most of the refinery, and its wholly-owned subsidiaries, Procon, Inc. and Procon (Great Britain) Ltd. which constructed the refinery.

25. During early 1974, the partially completed PRC refinery produced a profit because the refined product prices had been pushed to unprecedented levels above the very high prices of crude oil, largely because of the oil shortage caused by the Arab oil embargo. About the middle of 1974, the refined product prices began to decline to a level which caused the refinery to operate at a loss. Such loss was due to the design and construction errors committed by the construction contractor, the result of which was that the refinery was incapable of producing the lighter, more valuable, refined products. Had the refinery been capable of producing such lighter, more valuable, refined products, most, if not all, of the operating losses would have been avoided. The net loss during 1974 (including a first quarter profit of $8,500,000) was $58,000,000, which losses and the reasons therefore were currently made known to Ataka.

26. Early in 1974, Ataka at its request became

(a) exclusive bunker supply agent for all of NRC's ships in the Persian Gulf, the loading port for NRC's crude oil; in most instances, the price charged NRC by Ataka was substantially in excess of prevailing market prices, and

(b) a purchaser from the refinery of approximately one million barrels of naphtha, having a value of $15,000,000, wich Ataka urgently needed to exchange for chemical products

it required; this product supplied early in 1974, in the midst of the Arab oil embargo; and

(c) the supplier to the refinery of $1,000,000 of platinum catalyst required for the refinery's reforming unit.

27. On January 18, 1974, in a premature effort to invoke the provisions of Article III(a) of the Agency Agreement under which PRC was obligated to increase its $3,000,000 Letter of Credit after 18 months to an amount "equal to the average of the cost of the shipments of the last three (3) months", Ataka suggested that the said Letter of Credit be increased to a higher level required because of the increased cost of crude oil. M. Takagi, Managing Director of Ataka, "guaranteed" that the Letter would "not be used and in case of need I will work out with you some other method of refinancing should instances occur." Nothing more was done and the matter was dropped until August 1975 when Ataka suggested an increase in the Letter of Credit to approximately $22,500,000. After some discussion the matter was dropped.

28. On October 16, 1974, the first Bill of Exchange which PRC did not have funds to pay became due; in accordance with the understood payment procedure, Ataka caused such Bill of Exchange, which was in the amount of $15,400,000, to

be "rolled over" to December 15, 1974. Ataka paid that Bill of Exchange on the due date and PRC reimbursed Ataka on December 16th and 17th; thereafter, on 19 separate occasions Bills of Exchange were "rolled over" or "re-rolled over" to conform to the ability of PRC to pay such Bills of Exchange.

29. In February 1975, Ataka began efforts to have its then unsecured claims against NRC and PRC secured by a third mortgage on the refinery, on the representation that such a third mortgage was being required by Ataka's banks. The Agency Agreement makes no provision for such third mortgage. As the issuance of the third mortgage required the consent of the holders of the first and second mortgages, NRC and PRC undertook to endeavor to obtain such consents.

30. While negotiations were in progress with respect to a third mortgage security for Ataka's claim, the First National Bank of Chicago ("Chicago Bank"), a creditor of PRC in the amount of approximately $28,000,000, of which $20,000,000 was secured by a debenture with a lien on the crude oil and product inventory of PRC caused a Receiver to be appointed by the Newfoundland courts on October 24, 1975, on the basis of a default in payment which was then due.

31. Ataka then caused meetings to be held among Ataka, UOP, Inc. (which, as indicated in paragraph 18 hereof, designed a large part of the refinery and the parent company of the contractor which constructed the refinery), NRC, PRC

and certain affiliated interests. As a result of such meetings an agreement dated October 28, 1975, was executed among said parties providing, inter alia,

(a) the effective date of said agreement was to be when the holders of the first and second mortgages granted their consent to the issuance of a third mortgage;

(b) immediately upon execution of the agreement a number of steps were to be taken for Ataka and UOP to take over effective control of the management of NRC, PRC and certain of their affiliates;

(c) Ataka and UOP would undertake through financial support (without any obligation to supply additional funds) and otherwise, including management of the operations, use their best efforts to continue the operations of PRC with the right to terminate such support in the event they decide they are unable to continue such operations on a profitable basis."

32. UOP failed to take any action with respect to the October 28, 1975 Agreement; in spite of the fact that certain parts of the Agreement were not performed, the financial and accounting management of NRC and PRC were isolated and placed under the control of Ataka in accordance with the said Agreement. Office space was provided Ataka and its accountants and all financial decisions and receipts and payments of all types were placed under their absolute

control and discretion. From that time forward until February 14, 1976, the affairs of NRC and PRC remained under the control of Ataka, which was then under control of Sumitomo Bank.

33. Following the assumption of control of the affairs of NRC and PRC, Ataka

(a) on November 8, 1975, paid the then remaining $18,000,000 owed to the Chicago Bank by PRC (said amount having been reduced by $10,000,000 from proceeds of accounts receivable seized by the Chicago Bank); Ataka requested as part of the transaction a demand debenture of PRC ("First Debenture") secured by a lien on PRC's crude oil and refined product inventory. It was understood by PRC and NRC that this note would remain outstanding as were the Bills of Exchange.

(b) "Rolled over" a Bill of Exchange for $18,700,000, due on November 11, 1975, to November 9, 1976, for one year, and Bills of Exchange for $11,200,000 and $9,700,000 due, respectively, on November 26th and 29th, 1975, to January 26th and 30th, 1976, based upon Ataka's decision as to the then projected cash flow of PRC which showed that two Bills of Exchange could be paid on those dates, without interference with the normal conduct of PRC's business.

(c) for the first time, altered the procedure for payment for crude oil, as is more fully described in paragraph 31 hereof; Ataka advanced $25,000,000 to PRC on December 15,

1975, which Ataka then took back to pay itself for a cargo of crude delivered to PRC; Ataka required another debenture ("Second Debenture"), secured as described in subparagraph (a) above and due February 15, 1976; it was understood by NRC and PRC that these maturities would be "rolled over" as were the Bills of Exchange, to coincide with PRC's cash flow.

(d) on December 23, 1975, drew against the $3,000,000 Letter of Credit which had been outstanding and untouched since September 13, 1973.

(e) in accordance with the newly instituted procedure, advanced $6,320,000 to PRC on January 30, 1976, which was used for a similar purpose as described in (b) above, with the issuance of a third debenture ("Third Debenture") due May 1, 1976; it was similarly understood by NRC and PRC that these maturities would be "rolled over" as were the Bills of Excnange.

34. On or about November 15, 1975, defendant Sumitomo Bank, Ataka's principal Japanese bank, began to exert its influence in the conduct of the relations between Ataka, NRC and PRC; shortly thereafter, on or about December 15, 1975, defendant Morgan, Stanley, investment bankers, was retained, either by Sumitomo Bank acting on behalf of Ataka, or directly by Sumitomo Bank, to

give advice on the future conduct of the relationships between Ataka, PRC, NRC and, apparently, on the relationships with the other Shaheen companies (i.e., subsidiaries of Shaheen).

35. On information and belief, the handling of all of Ataka's relationships with NRC, PRC and the other Shaheen companies was placed under the control of Morgan, Stanley on or about December 15, 1975. Within days of the retention of Morgan Stanley the cordial and cooperative relationships betwen Ataka and the Shaheen companies terminated.

36. As indicated in paragraph 29, above, Ataka on November 15, 1975, for the first time, changed the payment procedures set forth in the Agency Agreement which had been followed for two years and involved credit advances by Ataka to NRC and PRC of more than $490,000,000 in 1974 and 1975. Ataka required the issuance of the Second and Third Debentures. It was this change in the payment procedure, coupled with subsequent actions by Ataka and Sumitomo Bank in connection with the Second Debenture, which constituted a substantial breach in the Agency Agreement and the perpetration of unlawful conversion of the funds of PRC and NRC by Ataka and Sumitomo Bank. The nature of the breach of contract and unlawful conversions by Ataka and Sumitomo Bank was accomplished as follows:

(a) Under the Agency Agreement, prior to the breach thereof, crude oil was purchased by NRC and PRC under Letters of Credit furnished by Ataka; Bills of Lading were issued by the crude oil supplier together with Bills of Exchange for the amount due on the crude oil, payable on the specified payment date; the Bills of Exchange were presented for acceptance by Ataka's bank. The accepted Bills of Exchange were then held by the crude supplier and presented for payment on the due date. Payment was made of such Bills of Exchange by PRC from the net funds derived from the sale of refined products; in the absence of sufficient funds, Ataka caused such Bills of Exchange to be "rolled over" until funds became available.

(b) In contrast, the procedure followed in connection with the December 15, 1975 and January 30, 1976 deliveries, was that the crude oil was purchased by PRC from the crude supplier under the said Letters of Credit supplied by Ataka; Ataka had previously caused NRC to instruct the crude oil supplier to issue the Bills of Lading in Ataka's name, rather than in the name of NRC or PRC; the Bills of Exchange were presented by the crude supplier to Ataka's banks for acceptance as had been previously done; after the crude oil arrived at the refinery, Ataka refused to permit it to be delivered to PRC until issuance of the Second Debenture; the tanker remained anchored off the refinery jetty for 33 days

(at an added cost of approximately $660,000) pending negotiations over the issuance of the Second Debenture. As PRC was facing imminent shutdown of the refinery for lack of crude oil, PRC agreed to issue to Ataka said Second Debenture. NRC and PRC understood that the Second Debenture would be refinanced on the same basis as the Bills of Exchange had been previously "rolled over".

37. The actual procedures required by Ataka in the issuance of the Second Debenture by PRC were as follows:

(a) The crude oil, having a value of $24,446,850 was delivered to PRC; simultaneously Ataka made a loan of $25,000,000 to PRC against issuance of the Second Debenture; the cash proceeds from the loan were then applied by Ataka as a payment to itself for the crude oil so delivered, with the difference of $553,150 being "credited" to other amounts owed to Ataka.

(b) As PRC sold refined products produced from the crude oil, the proceeds were required by Sumitomo Bank (then directing the management of NRC and PRC) to be deposited in PRC's account in the Sumitomo Bank. Ataka and Sumitomo would then inform PRC as to the disposition of such funds in the Sumitomo Bank account on the basis that certain, but not all, of the current expenses of PRC could be paid on the specific condition that substantially greater amounts would

be paid to Ataka in reduction of the Second Debenture (prior to its maturity date). Again, on January 30, 1976, Ataka apparently on the advice of Sumitomo Bank and Morgan, Stanley, refused to permit the discharge of a cargo of crude oil at the refinery and after some negotiations and issuance of another debenture in a form similar to that described in the preceding paragraph, advanced $6,300,000 to PRC against the discharge of approximately one-third of the cargo; subsequently, after prolonged unsuccessful negotiations to obtain discharge of the remaining crude oil the vessel departed with the remainder of its cargo aboard.

38. Between December 29, 1975 and February 10, 1976, Ataka and Sumitomo Bank by the above described procedures,

(a) unlawfully converted to their own use $18,700,000 of PRC's operating funds;

(b) acting in concert with Sanko Steamship Co., of which Sumitomo Bank is a principal bank, unlawfully forced PRC to pay, for account of NRC, $3,000,000 of funds for charter hire of vessels chartered to NRC, and which NRC would not otherwise have paid as not being due and owing.

39. Thereafter, on February 13, 1976, the day Ataka moved for the appointment of defendant Clarkson as Receiver by the Newfoundland Court by alleging the insolvency of NRC and PRC, as is more fully described in paragraphs 40 and 41, the Sumitomo Bank, without prior notice to PRC of any claimed amount due Sumitomo Bank unlawfully converted to its own use, $2,637,929 of PRC's funds, claiming a right of "set off". Thereafter, on

February 20, 1976, a customer paid $905,739 into PRC's Sumitomo Bank account, following previous instructions given by PRC, and Sumitomo Bank immediately and unlawfully converted said amount to its own use, again claiming a "set off."

40. In the latter part of December 1975, Morgan Stanley retained or caused to be retained the Houston based engineering firm of Pace Engineering Company ("Pace") purportedly to advise them on the technical aspects of the refinery. Pace sent a group of engineers to the refinery purportedly for such purpose; the engineers spent one and one-half days at the refinery and conducted their examination in sub-freezing temperatures which severely restricted outdoor work and observation. Thereafter, Pace rendered a report, supposedly dealing with the condition of the refinery and, after advising NRC and PRC of the issuance of such report, Morgan Stanley and Pace refused to permit NRC or PRC to examine a copy of said report; Ataka denied having received a copy of said report.

41. Throughout the period 1974 and 1975, the refinery technical staff was constantly making and updating various plans for correcting the engineering and construction deficiencies resulting from the breaches of the construction contract by UOP and its subsidiaries Procon and Procon (Great Britain) Ltd. By September of 1975 the refinery technical staff had concluded that certain corrections in the design and alterations

of the mechanical equipment in the refinery would permit operations at a point where the refinery could produce the design yield of refined products.

42. After the said technical studies had been completed and cost estimates for the various required corrections were made, they were turned over to the PRC and NRC financial management which began the preparation of economic feasibility studies on the basis of the then projected product yields after completion of the alterations and repairs. These studies showed that even at the depressed level of refined product prices prevailing in the fall of 1975, the refinery, after corrections, would produce a substantial profit before debt service.

43. In January 1976, Morgan Stanley, acting for Ataka and Sumitomo Bank in their relations with NRC and PRC, asserted that Morgan Stanley "had no forward plan" for the operation of the refinery on a profitable basis. The NRC and PRC financial management then extracted information from existing studies, and prepared a formal presentation based upon the refinery as it presently existed plus completion of the visbreaking unit, anticipated for April 1976, and delivered a copy of such study on February 3, 1976 to Ataka and Morgan Stanley. This report showed that on the basis stated the refinery was capable of operating at a level which would produce a profit before debt service of $8,300,000 per year,

and that with a price increase of 2.5¢ per gallon (a substantial part of which has since been realized) the refinery would produce a profit before debt service of $41,000,000 per year.

44. In disregard of the forecasts supplied by NRC and PRC and in purported reliance upon the cursory examination of Pace, Morgan Stanley acting for Sumitomo Bank and Ataka and pursuant to a definite plan entitled "Project Winnet" caused Ataka, in violation of the Agency Agreement, to claim defaults on the First, Second and Third Debentures and on the basis of such alleged defaults Ataka, on February 13, 1976, (a) appointed Clarkson Receiver of the inventory purportedly under liens securing the said Three Debentures; (b) requested and obtained the appointment of Clarkson as Receiver all the assets of NRC and PRC by the Supreme Court of Newfoundland.

45. In the documents filed with the Newfoundland Court in support of its application for the appointment of Clarkson Receiver, Ataka made many false and fraudent allegations, and failed to make material disclosures; had such false and fraudulent statements not been made and had the material omissions been disclosed, no legal grounds for the appointment of the Receivers would have existed. Ataka also failed to disclose to the Newfoundland Court that (a) the reason why NRC and PRC were not meeting their current obligations to

other creditors was that, between November 15, 1975, and February 13, 1976, Ataka and Sumitomo Bank had unlawfully converted $21,238,926 of the funds of NRC and PRC for their own use, and (b) the existence of the New York "forum selection" clause in the Agency Agreement.

FIRST CLAIM FOR RELIEF

46. Plaintiffs repeat and reallege paragraphs 1 through 45 in their entirety with the same force and effect as if they were herein repeated in full.

47. Ataka substantially breached the Agency Agreement in that they

(a) forced PRC to issue the First, Second, Third Debenture, dated, respectively, November 8, 1975, December 15, 1975 and January 30, 1976.

(b) wrongfully converted the amount of $18,700,000 of the operating funds of PRC and NRC;

(c) terminated the arrangements for the financing of the purchases of crude oil necessary for the operation of the refinery for which Ataka was the "sole agent" and thus forced the shutdown of said refinery;

(d) invoked the jurisdiction of the Bankruptcy Court of Newfoundland because of the falsely alleged bankruptcy of NRC and PRC, all in violation of the designation of the New York

Courts as the proper forum for determination of disputes under the Agency Agreement and Supplemental Agreement all causing irreparable injury and damage to PRC, NRC and plaintiffs.

SECOND CLAIM FOR RELIEF

48. Plaintiffs repeat and reallege paragraphs 1 through 47 in their entirety with the same force and effect as if they were herein repeated in full.

49. Ataka wrongfully invoked the jurisdiction of the Supreme Court of Newfoundland and caused the appointment of a Receiver of NRC and PRC based upon false and fraudulent representations to the said Court, causing irreparable injury and damage to NRC, PRC and plaintiffs.

THIRD CLAIM FOR RELIEF

50. Plaintiffs repeat and reallege paragraphs 1 through 49 in their entirety with the same force and effect as if they were herein repeated in full.

51. Ataka, by its wrongful invocation of the jurisdiction of the Newfoundland Court and resultant appointment of Receivers of NRC and PRC's assets, caused a default to be declared by certain holders of the First and Second Mortgage on the refinery, which in turn, resulted in those creditors appointing Clarkson as Receiver of the refinery, and Clarkson acting on the instructions of Morgan, Stanley has commenced shutting down the refinery and discharging all operating personnel, all causing irreparable damage to NRC, PRC and plaintiffs.

FOURTH CLAIM FOR RELIEF

52. Plaintiffs repeat and reallege paragraphs 1 through 51 in their entirety with the same force and effect as if they were herein repeated in full.

53. Defendant Sumitomo Bank wrongfully converted to its own use $3,543,666 of the funds of NRC and PRC, all causing irreparable injury and damage to NRC, PRC and plaintiffs.

FIFTH CLAIM FOR RELIEF

54. Plaintiffs repeat and reallege paragraphs 1 through 53 in their entirety with the same force and effect as if they were herein repeated in full.

55. Defendants Ataka and Sumitomo, together with Sanko Steamship Company, acting in concert, caused the wrongful payment of $3,000,000 of PRC's funds to Sanko Steamship Company which payment was not owed to Sanko Steamship Company, all causing irreparable injury and damage to NRC, PRC and plaintiffs.

SIXTH CLAIM FOR RELIEF

56. Plaintiffs repeat and reallege paragraphs 1 through 55 in their entirety with the same force and effect as if they were herein repeated in full.

57. All of the defendants and Sanko Steamship Company, acting in concert and under the direction and control of Morgan, Stanley and its attorneys, entered into and actively participated in a conspiracy, for the purpose of breaching the Agency Agreement, wrongfully invoking the jurisdiction of the Supreme Court of

Newfoundland, wrongfully causing a Receiver to be appointed, wrongfully converting funds of NRC and PRC and causing wrongful payments of funds of NRC and PRC and defendants did in fact breach said Agency Agreement, wrongfully invoke the jurisdiction of the Supreme Court of Newfoundland, wrongfully cause a Receiver to be appointed, wrongfully convert funds of NRC and PRC and caused wrongful payment of funds of NRC and PRC as described in Claims first through Fifth hereof.

57. In furtherance of said conspiracy, defendants performed, among others, the following acts:

(a) defendants wrongfully and using extreme economic duress, in violation of the Agency Agreement, caused Ataka to demand that PRC execute and deliver to Ataka the First, Second and Third Debentures;

(b) defendants wrongfully deprived NRC and PRC during the period November 15, 1975 through February 10, 1976, of $25,200,000, $18,700,000 of which was wrongfully converted by Ataka to its own use; $3,500,000 of which was wrongfully converted by Sumitomo Bank to its own use and $3,000,000 of which was wrongfully diverted to Sanko to its own use, all with the objective and purpose of making NRC and PRC insolvent and unable to pay the claims of its creditors as they became due, as part of the overall objective to put NRC and PRC in bankruptcy;

(c) defendants on or before February 6, 1976, caused Ataka wrongfully to attempt to assign to Atlantic Trading all of the assets and liabilities arising out of or relating to the dealings between Ataka America

and Ataka Japan and NRC and PRC for the purpose of bringing the bankruptcy action and furthering the objectives of the conspiracy alleged herein;

(d) defendants, on February 13, 1976, caused Atlantic Trading, as Ataka's assignee in violation of the New York Judiciary Law §489, to demand payment of $18 million from PRC, which, by reason of the Agency Agreement was not then due and payable, with full knowledge that the wrongful diversion of PRC's funds by defendants had rendered PRC unable to pay said amount; on the same day, and using PRC's alleged inability to pay said First Debenture as a basis therefor, defendants caused Atlantic Trading to

(i) invoke the default clauses under the First, Second and Third Debentures;

(ii) appoint Clarkson as receiver and manager of the property secured under said First, Second and Third Debentures and instructed Clarkson to take immediate possession thereof which Clarkson did with full knowledge of the existence and objective of the conspiracy;

(iii) filed a false and fraudulent Application supported by false and fraudulent affidavits, with the Supreme Court of Newfoundland for the appointment of Clarkson as an Interim Receiver under the Bankruptcy Act of Newfoundland for the purpose of taking immediate possession of all assets of PRC and NRC and to control its receipts and disbursements and authorizing Clarkson to institute "such legal proceedings in Canada and in any other jurisdiction as may be advisable to conserve the property of" NRC and PRC.

58. By reason of the foregoing, plaintiff has been defrauded and has suffered damages in the amount of $100,000,000, and plaintiff has suffered other irreparable damages.

SEVENTH CLAIM FOR RELIEF

59. Plaintiff repeats and realleges paragraphs 1 through 58 in their entirety with the same force and effect as if they were herein repeated in full.

60. Defendants Ataka America and Ataka Japan breached and failed to perform the agreements described in paragraph ~~18~~ 23(i), ~~18~~ 23(ii) and ~~18~~ 23(iv).

61. By reason of the foregoing plaintiff has been damaged in the amount of $100,000,000.

WHEREFORE: Plaintiff demands judgment

(a) against defendants Ataka America , Inc., Ataka & Co., Ltd. and Atlantic Trading (Delaware) Corp:

(i) ordering restitution forthwith to plaintiffs from defendants, jointly and severally, of the $18,700,000 of plaintiffs' funds wrongfully converted to the use of said defendants, together with interest thereon,

(ii) permanently enjoining the said defendants, their agents, attorneys and employees, from continuing the appointment of the Receivers of the inventory of PRC purportedly appointed under the First, Second and Third Debentures, or taking any further actions in derogation of PRC's ownership of such inventory,

(iii) permanently enjoining said defendants, their agents, attorneys and employees, from taking further action or otherwise participating in the proceedings pending in the Supreme Court of the Province of Newfoundland, entitled "In the Matter of the Bankruptcy Act. Chap. B-3, R.S.C. 1970 and In the Matter of Provincial Refining Company Limited", Docket No. 1976 No. 337 and "In the Matter of the Bankruptcy Act Chap. B-3, R.S.C. 1970 and In the Matter of Newfoundland Refining Company Limited," Docket No. 1976 No. 338,

(iv) awarding damages against defendants jointly and severally in the amount of $100,000,000 on the plaintiffs Sixth Claim for Relief;

(v) award damages against defendants Ataka America and Ataka Japan in the amount of $100,000,000 on plaintiffs Seventh Claim for Relief; and

(vi) awarding plaintiffs costs of this action, attorneys fees and such other and further relief as may be just and proper in the premises.

(b) against defendants Ataka America and Ataka Japan ordering such defendants to specifically perform the Agency Agreement;

(c) against defendant Sumitomo Bank, Ltd.

(i) ordering restitution forthwith to plaintiffs of the $3,543,666 of plaintiffs funds wrongfully converted to the use of said defendant,

(ii) awarding plaintiffs damages against defendants in the amount of $10,000,000, or such higher amount as plaintiffs may have suffered by reason of the actions of defendants, and

(iii) awarding plaintiffs costs of this action, disbursements, attorneys fees and such other and further relief as may be just and proper in the premises.

MANNING, CAREY & REDMOND
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New York, New York 10017
(212) 867-1040

BEST COPY AVAILABLE

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

ROY M. FURMARK, being duly sworn, deposes and says:

Deponent is executive vice president of the plaintiff SNR Holdings, Inc. and during the pertinent periods stated in the Amended Complaint, was executive vice president of plaintiff Shaheen Natural Resources Company, Inc.; deponent has read the foregoing Amended Complaint and knows the contents thereof and the same is true to deponent's own knowledge, except as to matters therein stated to be alleged upon information and belief as to those matters deponent believes to be true. This verification is made by deponent because the plaintiff is a corporation of which deponent is or was an officer.

Roy M. Furmark

Roy M. Furmark

Sworn to before me this
8th day of March, 1976

Maureen McPartland

Notary Public

MAUREEN McPARTLAND
NOTARY PUBLIC, State of New York
No. 41-2538150
Qualified in Queens County
Certificate filed in New York County
Commission Expires March 30, 19 77

BEST COPY AVAILABLE

EXHIBIT B

At a Special Term, Part II of the Supreme Court of the State of New York, held in and for the County of New York, at the Courthouse at 60 Centre Street, New York, New York on the 18th day of March, 1976.

Present: Hon. Martin B Stecher, Justice.

- -X

SNR HOLDING, INC. as sole stockholder of NEWFOUNDLAND REFINING COMPANY LIMITED & PROVINCIAL REFINING COMPANY LIMITED; and SHAHEEN NATURAL RESOURCES COMPANY, INC.,

Plaintiffs,

-against-

ATAKA AMERICA, INC., ATAKA & CO., LTD., ATLANTIC TRADING (DELAWARE) CORP., THE SUMITOMO BANK, LTD., MORGAN, STANLEY & CO., CLARKSON & CO. LIMITED, CLARKSON, GORDON & CO., KLEINWORT BENSON LIMITED and THE GOVERNMENT OF THE PROVINCE OF NEW FOUNDLAND AND LABRADOR,

Defendants.

ORDER TO SHOW CAUSE FOR SUBSTITUTION OF PARTIES

Index No. 03959/76

- -X

Upon reading and filing the affidavit of Edna R. Sussman sworn to the 18th day of March, 1976, the summons and verified complaint, and all of the papers heretofore filed in this action.

LET the plaintiffs or their attorneys show cause before this Court at a Special Term Part I thereof, to be held in and for the County of New York at the County Courthouse at 60 Centre Street, New York, New York, on the 19th day of March, at 9:30 a.m., or as soon thereafter as counsel can be heard why an order should not be made pursuant to Rule 1017 of the Civil Practice Law and Rules substituting the Clarkson Company Limited, as trustee in bankruptcy for Provincial Refining Company Limited and Newfoundland

Refining Limited as the plaintiff in this action and staying all proceedings in this action pending determination of this motion and for such other and further relief as may be necessary to preserve the assets of the estate of Provincial Refining Company Limited and Newfoundland Refining Company Limited and to ensure the equitable administration of the bankruptcy proceedings presently pending before the Supreme Court of the Province of Newfoundland and for such other and further relief as to this Court may seem just and proper. /2

Sufficient reason appearing therefor, let service of a copy of this order upon the attorney for the plaintiffs at or before 5:30 p.m. on the 18th day of March be deemed sufficient.

ENTER

s/ M.B.S
J.S.C.

TO:

Manning, Carey & Redmond, Esqs.
Attorneys for Plaintiffs
122 East 42nd Street
New York, New York 10017

Skadden, Arps, Slate, Meagher & Flom
Attorneys for Defendants Ataka America, Inc., and Atlantic Trading (Delaware) Corporation
919 Third Avenue
New York, New York 10022

Coudert Brothers
Attorneys for Defendant
The Sumitomo Bank, Ltd.
200 Park Avenue
New York, New York

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

- -X

SNR HOLDINGS, INC. as sole stockholder of NEWFOUNDLAND REFINING COMPANY LIMITED & PROVINCIAL REFINING COMPANY LIMITED: and SHAHEEN NATURAL RESOURCES COMPANY, INC.,

Plaintiffs,

-against-

ATAKA AMERICA, INC., ATAKA & CO., LTD., ATLANTIC TRADING (DELAWARE) CORP., THE SUMITOMO BANK, LTD., MORGAN, STANLEY & CO., CLARKSON & CO. LIMITED, CLARKSON, GORDON & CO., KLEINWORT BENSON LIMITED and THE GOVERNMENT OF THE PROVINCE OF NEW FOUNDLAND AND LABRADOR,

Defendants.

- -X

AFFIDAVIT IN SUPPORT OF MOTION TO SUBSTITUTE PARTIES

Index No. 03959/76

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

Edna R. Sussman, being duly sworn deposes and says:

1. I am an attorney admitted to practice in the State of New York and am associated with the firm of White & Case, attorneys for The Clarkson Company Limited, as trustee in bankruptcy for Provincial Refining Company Limited ("PRC") and Newfoundland Refining Company Limited ("NRC").

2. I submit this affidavit in support of the motion by The Clarkson Company Limited, as trustee in bankruptcy for PRC and NRC, for an order substituting The Clarkson Company Limited, as trustee in bankruptcy for PRC and NRC, as plaintiffs in this action pursuant to CPLR §1017and staying all proceedings in this

action pending the determination of this motion.

3. By orders of the Supreme Court of the Province of Newfoundland on March 12, 1976 PRC and NRC were adjudged bankrupt and a receiving order was made against them. The Clarkson Company Limited was duly appointed as trustee of the estates of the said bankrupts. (Orders of the Supreme Court of Newfoundland are annexed hereto as Exhibit A.)

4. Section 1017 of the Civil Practice Law and Rules specifically provides that:

> "If a receiver is appointed for a party, ...the court shall order substitution of the proper parties."

5. As is set forth in paragraphs 1 and 3 of the complaint filed herein the plaintiffs named in this action are suing derivatively on behalf of the bankrupts, PRC and NRC. The claims set forth in the complaint belong to the bankrupts, PRC and NRC, and must be prosecuted on their behalf by The Clarkson Company Limited, as trustee in bankruptcy for PRC and NRC.

6. No prior application for the relief requested herein has been made.

7. Wherefore The Clarkson Company Limited respectfully requests that the relief sought herein be granted.

Edna R. Sussman

Sworn to before me this
18th day of March, 1976.

Notary Public

LUZ PALMIRA ROMAN
Notary Public, State of New York
No. 03 4624757
Qualified in Nassau County
Commission Expires March 30, 1977

Exhibit B

243

IN THE SUPREME COURT OF NEWFOUNDLAND

TRIAL DIVISION

(In Bankruptcy)

IN THE MATTER OF

The Bankruptcy Act
Chap. B-3, R.S.C. 1970

AND IN THE MATTER OF

Provincial Refining
Company Limited

RECEIVING ORDER

UPON the Petition of Atlantic Trading (Delaware) Corporation of the State of Delaware, one of the United States of America, a creditor, filed the 13th day of February, A.D. 1976, AND UPON HEARING Chalker, Q.C., of Counsel for Atlantic Trading (Delaware) Corporation AND UPON HEARING Aubrey Bonnell, of Counsel for Provincial Refining Company Limited

AND IT APPEARING to the Court that the following act of bankruptcy has been committed, namely: the said Provincial Refining Company Limited has, within the last six months next preceding the filing of the petition for a receiving order, ceased to meet its liabilities generally as they became due.

EXHIBIT A

(1) IT IS ORDERED that the said Provincial Refining Company Limited, a company incorporated under the laws of the Province of Newfoundland, Canada, and having its registered office at 65 Elizabeth Avenue, in St. John's, in the said Province of Newfoundland, be and is hereby adjudged bankrupt and a receiving order is hereby made against the said Provincial Refining Company Limited,

(2) IT IS FURTHER ORDERED that The Clarkson Company Limited of the said City of St. John's, be and is hereby appointed trustee of the estate of the said bankrupt.

(4) AND IT IS FURTHER ORDERED that the costs of and incidental to this petition and order be paid the petitioner out of the assets of the estate upon taxation thereof.

CHIEF JUSTICE

BEST COPY AVAILABLE

Exhibit B

220

IN THE MATTER OF

The Bankruptcy Act
Chap. B-3, R.S.C. 1970

AND IN THE MATTER OF

Newfoundland Refining
Company Limited

RECEIVING ORDER

UPON the Petition of Atlantic Trading (Delaware) Corporation of the State of Delaware, one of the United States of America, a creditor, filed the 13th day of February, A.D. 1976, AND UPON HEARING Chalker, Q.C., of Counsel for Atlantic Trading (Delaware) Corporation AND UPON HEARING Aubrey Bonnell, of Counsel for Newfoundland Refining Company Limited

AND IT APPEARING to the Court that the following act of bankruptcy has been committed, namely: the said Newfoundland Refining Company Limited has, within the last six months next preceeding the filing of the petition for a receiving order, ceased to meet its liabilities generally as they become due.

(1) IT IS ORDERED that the said Newfoundland Refining Company Limited, a company incorporated under the laws of the Province of Newfoundland, Canada, and having its

DEFENDANTS' NOTICE OF APPEAL

3/76
18-7

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

In Re

PROVINCIAL REFINING COMPANY LIMITED :

and

NEWFOUNDLAND REFINING COMPANY LIMITED,

Bankrupts :

THE CLARKSON COMPANY LIMITED, as Trustee in Bankruptcy, appointed by the Supreme Court of the Province of Newfoundland, of the property of Newfoundland Refining Company Limited and Provincial Refining Company Limited, :

Plaintiff :

-against-

JOHN M. SHAHEEN, ROY M. FURMARK, ALBIN W. SMITH, PHILIP GANDERT, PETER L. CARAS, PAUL W. RISHELL, WILLIAM J. SHERIDAN, and JOHN DOE, :

Defendants.

----------X

76 Civ. 1373 (R.O.)

NOTICE OF APPEAL

SIRS:

PLEASE TAKE NOTICE that the defendants hereby appeal to the Court of Appeals for the Second Circuit from (a) the Order of the Honorable Richard Owens, on March 23, 1976, granting an Order To Show Cause and entering a Temporary

Restraining Order; (b) the Court's refusal to grant defendants application made March 25, 1976, that the Temporary Restraining Order be vacated; and (c) the Court's refusal to enter an Order denying said Application to Vacate said Order under Rule 61 of the Federal Rules of Civil Procedure, on the grounds that such actions are inconsistent with substantial justice.

Defendants request that the Court of Appeals direct the District Court to vacate the Temporary Restraining Order forthwith and stay all proceedings before the District Court in this matter pending a decision by the Supreme Court, New York County, in the action (SNR Holdings, Inc. et al, v. Ataka America, Inc. et al. (Docket 03959/76)) filed prior to the institution of the action herein, in which the identical question of State law has been raised by plaintiff herein.

Respectfully submitted,

MANNING, CAREY & REDMOND
Attorneys for Defendants

By _____
A Member of the Firm
122 East 42nd Street
New York, New York 10017
(212) 867-1040

WHITE & CASE, ESQS.
Attorneys for Plaintiff
14 Wall Street
New York, New York 10005
(212) 732-1040

dated 3/31/76

AFFIDAVIT OF DONALD C. HOOVER IN SUPPORT OF PRELIMINARY INJUNCTION 48'248

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In Re	:	
PROVINCIAL REFINING COMPANY LIMITED	:	
and	:	
NEWFOUNDLAND REFINING COMPANY, LIMITED,	:	
Bankrupts.	:	76 Civ. 1373 (R.O.)
THE CLARKSON COMPANY LIMITED, as Trustee in Bankruptcy, appointed by the Supreme Court of the Province of Newfoundland, of the property of Newfoundland Refining Company Limited and Provincial Refining Company Limited,	:	AFFIDAVIT
Plaintiff,	:	
-against-	:	
JOHN M. SHAHEEN, ROY M. FURMARK, ALBIN W. SMITH, PHILIP GANDERT, PETER L. CARAS, PAUL W. RISHELL, WILLIAM J. SHERIDAN, and JOHN DOE,	:	
Defendants.	:	

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

DONALD C. HOOVER, being duly sworn, says:

I am a chartered accountant (the Canadian equivalent of certified public accountant) and Vice-President of The Clarkson Company Limited ("Clarkson"), Trustee in Bankruptcy of Newfoundland Refining Company Limited ("NRC") and Provincial Refining Company Limited ("PRC"). I submit this

affidavit in support of Clarkson's application for a preliminary injunction.

Clarkson has been appointed Trustee in Bankruptcy for NRC and PRC by the Supreme Court of the Province of Newfoundland. It is obviously necessary that for Clarkson to fulfill its obligations as Trustee in Bankruptcy it must have custody and control of all assets of the bankrupts, and in particular the books and records of the bankrupts.

Clarkson has been engaged in an examination of the books and records of the bankrupts pursuant to the order of this Court since March 23 (except for March 25 when the defendants' securing of a restraining order from the Supreme Court of the State of New York precluded our examination). An expeditious examination requires that Clarkson be given custody and control of the books and records. We have been allowed access during what the defendants regard as working hours, that is Monday through Friday from approximately 9 A.M. to approximately 5 P.M. The Court should be advised that these are not the hours which we would regard as necessary under the circumstances. Our examination of the books and records on the property of companies which I believe are controlled by the former officers and directors of NRC and PRC has been impeded by such mechanical matters as the refusal of defendants to give Clarkson access to Xerox machines. Further, we are continually surrounded by agents of the defendants, precluding our representatives from having the normal conversations and, indeed, telephone calls essential to this sort of investigation.

I can assure the Court that if Clarkson is given

custody and control of the bo(and records of NRC and PRC, as has been requested, that Clarkson will safeguard the property and assure the Court that if its order is either changed by this Court or on appeal in the Canadian court, that Clarkson will forthwith return the books and records.

Clarkson, as Trustee in Bankruptcy, further urgently needs control of the other property of NRC and PRC. Every day that the property remains within the control of one or the other of the financially troubled companies in the Shaheen group, the possibility continues that another creditor of another Shaheen company may attach or otherwise levy upon property rightfully belonging to the estate. To preclude controversies which could dissipate the assets of the estate and to preserve the fair distribution of the estate for all the creditors, it is essential that Clarkson be given, as Trustee, custody and control of all assets, including bank accounts and accounts receivable of PRC and NRC.

Failure to turn over to Clarkson the books and records of the bankrupts may cause irreparable injury to the estate. I wish to further emphasize what was set forth in the affidavit of Jeffrey A. Barist, sworn to March 23, 1976 as to the need for Clarkson to examine the books and records. The limited examination of the books and records which we have been allowed thus far indicates to us that tens of millions of dollars were disbursed from NRC to PRC to other Shaheen-related companies under circumstances which our counsel advise require immediate investigation and legal action. As Trustee in Bankruptcy, we are charged under

Canadian law, similar I am informed to American law, to recover for the estate and the benefit of creditors all transfers which were in defraud of creditors or otherwise preferential or improper. It is obvious that this important task cannot be accomplished without Clarkson being given unfettered access to the books and records of NRC and PRC.

8/ I have been familiar with this action since Clarkson's first involvement in the bankruptcy of NRC and PRC, and am fully familiar with the proceedings herein. I have read the affidavit of Jeffrey A. Barist, sworn to March 23, 1976, and have further read the affidavit of Richard deY. Manning, sworn to March 25, 1976. With respect to the assertions by Mr. Manning that Mr. Barist does not have knowledge of various aspects of this case which he recites in his affidavit (and which I understand to have been based upon documentary information and information transmitted to him by representatives of Clarkson), I can state that I have personal knowledge of these matters and hereby do affirm that the statements of fact made in the Barist affidavit are, to my knowledge and belief, true. /s

D C Hoover

DONALD C. HOOVER

Sworn to before me this
31st day of March, 1976.

Edna H. Sussman

EDNA H. SUSSMAN
Notary Public, State of New York
No. 31-4630710
Qualified in New York County
Commission Expires March 30, 1977

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In Re PROVINCIAL REFINING COMPANY LIMITED and NEWFOUNDLAND REFINING COMPANY, LIMITED, Bankrupts.	76 Civ. 1373 (R.O.)
THE CLARKSON COMPANY LIMITED, as Trustee in Bankruptcy, appointed by the Supreme Court of the Province of Newfoundland, of the property of Newfoundland Refining Company Limited and Provincial Refining Company Limited, Plaintiff, -against- JOHN M. SHAHEEN, ROY M. FURMARK, ALBIN W. SMITH, PHILIP GANDERT, PETER L. CARAS, PAUL W. RISHELL, WILLIAM J. SHERIDAN, and JOHN DOE, Defendants.	REPLY AFFIDAVIT

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

JEFFREY A. BARIST, being duly sworn, says:

I am a member of the bar of this Court and of the firm of White & Case, attorneys for The Clarkson Company, Limited, Trustee in Bankruptcy of Newfoundland Refining Company Limited ("NRC") and Provincial Refining Company, Limited ("PRC"). I submit this affidavit in support of

the application of Clarkson for a preliminary injunction.

DEFENDANTS' ATTEMPT TO GET THE NEW YORK STATE SUPREME COURT TO ENJOIN THE ORDER OF THIS COURT

On March 25, 1976 Mr. Manning secured from Mr. Justice Tyler, Supreme Court New York County, the following ex parte temporary restraining order in the action entitled SNR Holdings, Inc. v. Ataka America, Inc. (Index No. 03959/76):

> "ORDERED, that pending the hearing and determination of this motion, said defendant, its agents, attorneys and employees be, and hereby are, enjoined and restrained from taking any further action in the State of New York or interfering in any way with the business or assets of NRC or PRC or their officers, located in the State of New York, (a) pursuant to the purported appointment of said defendant as Trustee in Bankruptcy by Order dated March 12, 1976 of the Provincial Court of Newfoundland; or (b) pursuant to the purported authority granted said defendant as Receiver under the First Mortgage on the PRC refinery at Come By Chance, Newfoundland, the Second Mortgage on the said refinery and under the First, Second and Third Debentures issued by PRC...."

The issuance of this order denied Clarkson access to the books and records of NRC and PRC on March 25, 1976.

The order was secured in part on Mr. Manning's representation to the State court that: "It is not believed that such an order of this Court would in any way conflict with the order of the federal court." Affidavit of Richard deY. Manning, sworn to March 24, 1976.

On March 25, 1976 the State court was informed that the restraining order issued by the State Court would interfere with the right of inspection, copying and examination of books and records of NRC and PRC given by this Court to Clarkson. Justice Tyler thereupon modified

the restraining order he had issued the previous day so as to provide:

> "ORDERED, that the temporary restraining order entered by this Court on the 24th day of March, 1976 hereby is modified to the extent that Clarkson is not restrained from proceeding in the U. S. District Court action or taking any action pursuant to any order issued by that court." (Order of Justice Andrew R. Tyler, March 25, 1976.)

We leave for this Court to determine whether or not the securing of the initial restraining order by Mr. Manning was a deliberate contempt of its processes.

FURTHER ACTION BY MR. MANNING

On March 26, 1976 defendants filed a Notice of Appeal to the Second Circuit and moved the Circuit to (1) remove the stay issued by this Court; (2) stay all proceedings herein pending or determination of the State court proceeding. The motion is scheduled to be heard on April 6 (defendants originally noticed it for March 30). We believe that there is no jurisdiction in the Court of Appeals, there being no appealable order.

THE SMOKESCREEN OF THE TWO TRUSTEES

Mr. Manning does not contest that the Supreme Court of the Province of Newfoundland issued the receiving orders annexed as Exhibits A and B to the Barist affidavit of March 23, 1976 appointing Clarkson as Trustee. Instead, Mr. Manning asserts that Clarkson's status as Trustee "is highly questionable" (Manning affidavit, ¶9, sworn to March 25, 1976.) The arguments made by Mr. Manning that Chief Justice Mifflin of the Supreme Court of Newfoundland did

not correctly apply Canadian [illegible] is an argument which may be made only to the Canadian courts. However, so that this Court will understand the legal position of the Trustee in Canada we have enclosed as Exhibits A and B hereto, the affidavit of Messrs. Pierre Lamontagne and John Green, Canadian counsel qualified in the law of Canada, as to the position of who is the correct Trustee and the status of the bankruptcy proceedings in Newfoundland. Further annexed, so as to make the record complete are: the full "Proposal" of NRC and PRC (Exhibits C and D); the Notices of Appeal by PRC and NRC (Exhibits E and F) from the Order of Chief Justice Mifflin appointing Clarkson as Trustee; copies of the Order of Chief Justice Mifflin denying NRC's and PRC's Application for a stay (Exhibits G and H).

CLARKSON'S ALLEGED AFFILIATES

The Manning affidavit, sworn to March 25, 1976, asserts that it will "review the ex parte action sought by the applicants ("Clarkson") herein or those acting in concert with them...." (pages 2-3). Certain of the proceedings set forth in the Manning affidavit were not made by either Clarkson or anyone acting in concert with Clarkson, to wit.

The order of the Supreme Court of Newfoundland, per Chief Justice Mifflin, which appointed Clarkson as Interim Receiver for the assets of NRC and PRC, was sought by a creditor of NRC and PRC, Atlantic Trading (Delaware) Corp., a subsidiary of Ataka & Co., Limited, not Clarkson. If the affidavit, as Manning asserts, of Atlantic Trading is "demonstrably fraudulent" the place for such an argument is the Newfoundland court in which it was filed.

The Sanko Steamship Lines' application has, to our knowledge, nothing to do with the bankruptcy proceedings of NRC and PRC. Apparently, Mr. Manning implies that because Sanko Steamship Lines is a Japanese company it is somehow a "Japanese affiliate" of the Japanese corporations which are creditors of PRC and NRC to the amount of $350-million.

Apparently, Mr. Manning seeks to create the impression of some sort of conspiracy by linking Clarkson to entities with whom it has no connection. Indeed Mr. Manning's accusations go so far as to imply that the courts are somehow the accomplice of this "conspiracy". We find no other explanation for Mr. Manning's comment, after discussing what he alleges to be the ex parte stay orders of this Court and the failure of this Court to grant similar relief to NRC and PRC, that "equal protection of the laws are being stretched to the limit in this case." Manning affidavit, March 25, 1976 at ¶3. And we fail to understand Mr. Manning's assertion that "Judge Motley, chose not to endeavor to protect the jurisdiction of this Court from such ex parte Canadian orders...." (¶4)

THE NEW YORK STATE ACTION

The complaint in the New York State action brought by the group against the creditors and trustee is annexed as Exhibit I. It is an in personam action and pleads no issues present in this case.

THE ATTACK ON THE CANADIAN BANKRUPTCY PROCEEDINGS

We fail to understand much of the sense and any of the relevance of pp. 10-22 of the Manning affidavit.

Apparently these arguments were made and found wanting in the Canadian bankruptcy proceeding. They are of no relevance to the proceeding in this Court.

Jeffrey A. Barist

Sworn to before me
this 31st day of March, 1976.

EDNA R. SUSSMAN
Notary Public, State of New York
No. 31-4609740
Qualified in New York County
Commission Expires March 30, 1977

EXHIBIT A

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

In Re	
PROVINCIAL REFINING COMPANY LIMITED	
and	
NEWFOUNDLAND REFINING COMPANY, LIMITED,	76 Civ. 1373 (R.O.)
Bankrupts.	
THE CLARKSON COMPANY LIMITED, as Trustee in Bankruptcy, appointed by the Supreme Court of the Province of Newfoundland, of the property of Newfoundland Refining Company Limited and Provincial Refining Company Limited,	AFFIDAVIT
Plaintiff,	
-against-	
JOHN M. SHAHEEN, ROY M. FURMARK, ALBIN W. SMITH, PHILIP GANDERT, PETER L. CARAS, PAUL W. RISHELL, WILLIAM J. SHERIDAN, and JOHN DOE,	
Defendants.	

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

PIERRE LAMONTAGNE, being duly sworn, says:

I am a graduate of the Faculty of Law of McGill University, having received a B.C.L. degree in 1958.

I was called to the Bar of the Province of Quebec in June of 1959, and have practiced my profession actively since then.

I was appointed Queen's Counsel in January of this year.

I am a partner of the law firm of Weldon, Courtois, Clarkson, Parsons & Tétrault in Montreal, Province of Quebec, Canada.

I am one of the attorneys for Atlantic Trading Company (Delaware), the petitioning creditor against Provincial Refining Company Limited ("PRC") and Newfoundland Refining Company Limited ("NRC").

Under Section 91 of the British North America Act, 1867, which is the written Constitution of Canada, the legislative authority in matters of bankruptcy and insolvency is the Parliament of Canada; thus, bankruptcy law is uniform across Canada, although practice in certain matters may and does vary from province to province.

The relevant statute adopted by the Parliament of Canada is the Bankruptcy Act, R.S.C. 1970, Chapter B-3 (the "Act").

I have read the letter of Richard Y. Manning of March 20, 1976 to the Honorable Andrew R. Tyler, Justice of the Supreme Court of the State of New York, annexed as Exhibit F to the affidavit of Mr. Manning, sworn to March 25, 1976, and, in my opinion, the statements contained therein concerning Canadian bankruptcy law are incorrect.

I have read the order made by the Honorable Chief Justice Mifflin, of the Supreme Court of the Province of Newfoundland, on March 12, 1976 and, in my opinion, based on Canadian law and more particularly on the Act, The Clarkson Company Limited is the sole and only trustee to the assets of PRC and NRC.

The petition for receiving order presented to the

Supreme Court of the Province of Newfoundland was filed under the provisions of Section 25[1] of the Act, and the above order for a receiving order was made under paragraph 6 of the said Section.

Under the provisions of paragraph 9 of the said Section 25:

> "Upon a receiving order being made, the Court shall appoint a licensed trustee as trustee of the property of the bankrupt"

and it is under that provision that The Clarkson Company Limited was appointed trustee by the Honorable Chief Justice Mifflin.

Section 50[4] of the Act provides that:

> "The bankruptcy shall be deemed to have relation back to and to commence at the time of the filing of the petition on which a receiving order is made..."

Paragraph 5 of the said Section 50 provides that:

> "On a receiving order being made..., a bankrupt ceases to have any capacity to dispose of or otherwise deal with its property, which shall,...forthwith pass to and vest in the trustee named in the receiving order or assignment..."

Under the provisions of Section 1][2] of the Act:

> "The trustee shall, as soon as may be, take possession of the deeds, books, records and documents and all property of the bankrupt..."

Paragraph 4 of the said Section 12 provides that:

> "No person is, as against the trustee, entitled to withhold possession of the books of account belonging to the bankrupt or any papers or documents relating to the Court's or to any trade dealings of the bankrupt..."

Paragraph 5 of the said Section 12 provides that

any person who has in his possession or power any property of the bankrupt that he is not by law entitled to retain as against the bankrupt or the trustee must deliver the said property to the trustee and, under the provisions of paragraph 6 of the said Section, for the purposes of obtaining possession of and realizing upon the property of the bankrupt, a trustee has power to act as such "anywhere".

Pierre Lamontagne

Sworn to before me this
31st day of March, 1976.

EDNA R. SUSSMAN
Notary Public, State of New York
No. 31-4600740
Qualified in New York County
Commission Expires March 30, 1977

EXHIBIT B

DOMINION OF CANADA,

PROVINCE OF NEWFOUNDLAND,

CITY OF ST. JOHN'S,

TO WIT:

AFFIDAVIT

I, John M. Green, of the City of St. John's aforesaid, Solicitor, hereby make oath and say as follows:

(1) THAT I am a partner in the law firm of Chalker, Green & Rowe, Solicitors for The Clarkson Company Limited ("Trustee") and as such have personal knowledge of the facts herein deposed to except where otherwise noted.

(2) THAT pursuant to the provisions of the Bankruptcy Act, Chap. B-3, Revised Statutes of Canada 1970, as amended Atlantic Trading (Delaware) Corporation ("Atlantic") filed a Petition on February 13, 1976, in the Supreme Court of Newfoundland (Trial Division) In Bankruptcy (the "Court") praying that the Court grant receiving orders against the property of Provincial Refining Company Limited ("Provincial Refining") and the property of Newfoundland Refining Company Limited ("Newfoundland Refining").

(3) [illegible] January 13, 1976, issued (a) an Order appointing The Clarkson Company Limited Interim Receiver of the property of Provincial Refining and (b) an Order appointing The Clarkson Company Limited Interim Receiver of the property of Newfoundland Refining.

(4) THAT on March 8, 1976, hearings were commenced in the Court which concluded on March 12, 1976, at which time Chief Justice Kiffin adjudged Provincial Refining and Newfoundland Refining bankrupt and granted Receiving Orders (the "Receiving Orders") in respect of the property of each of such companies, appointing The Clarkson Company Limited to be Trustee of the estate of each of such companies.

(5) THAT on March 17, 1976, the Solicitors for Provincial Refining and Newfoundland Refining filed on behalf of each company a Notice of Appeal and Application for Leave to Appeal with the Court, in respect of each of the Receiving Orders.

(6) THAT it was held by the Quebec Superior Court (In Bankruptcy) in the case In Re Gilbert, (1922) 3 CBR 485 that the effect of an appeal against a receiving order is to be determined according to the ordinary rules of procedure of the local court.

(7) THAT the rules of the local court in Newfoundland are contained in The Rules of the Supreme Court (the "Rules")

made pursuant to the Judicature Act, Revised Statutes of Newfoundland, 1970, Chapter 187, as amended.

(8) THAT Order LIV Rule 16 of the Rules provides that "An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from, except so far as the Judge appealed from may order; and no intermediate act or proceeding shall be invalidated, except so far as the Judge appealed from may direct."

(9) THAT on March 29, 1976, Chief Justice Mifflin heard an application on behalf of Provincial Refining and Newfoundland Refining requesting that said Judge order a stay of the operation and execution of the Receiving Orders until the appeals to the Court of Appeal had been disposed of.

(10) THAT having read the Affidavit filed by the Solicitor for Provincial Refining and Newfoundland Refining and having heard counsel for all parties, Chief Justice Mifflin denied the said application for a stay of the operation and execution of the Receiving Orders.

Sworn to before me at the City of St. John's, in the Province of Newfoundland, this 31st day of March, A.D. 1976.

J. Derek Rossiter
A Notary Public

John McGrath
JOHN McGRATH

EXHIBIT C

Consumer and Corporate Affairs / Consommation et Corporations

Bankruptcy / Faillites

NOTICE TO THE TRUSTEE ACTING IN A PROPOSAL MADE BY AN INSOLVENT PERSON
(Sec. 12 (1), 42 (1))

AVIS AU SYNDIC NOMMÉ DANS UNE PROPOSITION DÉPOSÉE PAR UNE PERSONNE INSOLVABLE
(Art. 12 (1), 42 (1))

In the matter of the proposal of: Dans l'affaire de la proposition de:

Estate Name – Nom de l'actif		Trustee – Syndic
Newfoundland Refining Company Limited		Coopers & Lybrand Limited
Official Receiver – Séquestre officiel	Division No. N° de la division	District
Ronald B. Twohig		Newfoundland

Date filed Date de dépôt	Security Deposit Cautionnement	
12 | 03 | 76 (D-J M Y-A)	$ 1 Million	12 | 03 | 76 (D-J M Y-A)

I, an Official Receiver in and for this Bankruptcy Division, do hereby certify:

That you, the trustee acting in re the proposal of this estate, filed with me the said proposal pursuant to the provisions of section 42(1) of the Bankruptcy Act;

You, the trustee of this estate, are required pursuant to Section 12(1) of the said Act to deposit with me security in the sum above within seven days from the date hereof.

Je soussigné, séquestre officiel dans et pour la présente Division de faillite, certifie par les présentes:

Qu'en qualité de syndic vous m'avez produit une copie de la proposition susdite conformément aux dispositions de l'article 42(1) de la loi sur la Faillite.

Que vous êtes requis, conformément à l'article 12(1) de ladite loi, de déposer entre mes mains, d'ici sept jours, un cautionnement au montant indiqué en rubrique.

CANADA BANKRUPTCY ACT / LOI SUR LA FAILLITE
TIME / HEURE
12 MAR 1976
11:07 a.m.
NEWFOUNDLAND / TERRE-NEUVE
OFFICIAL RECEIVER - SÉQUESTRE OFFICIEL

Official Receiver – Séquestre officiel
Ronald B. Twohig

CC 4 843 110 731

BEST COPY AVAILABLE

Exhibit C

260

COOPERS & LYBRAND LIMITED

410 Duke Street Tower
Scotian Square
Halifax, N.S.

March 12, 1976

Ronald B. Twohig
Official Receiver
Bankruptcy Division
Department of Consumer & Corporate Affairs

Dear Mr. Twohig:

I am filing herewith a Proposal under the Bankruptcy Act, today lodged with me by Newfoundland Refining Company Limited together with a statement showing the financial position of the debtor at the date of the Proposal.

Also enclosed is a copy of the shareholder's resolutions authorizing the making of the Proposal.

Yours very truly,

ROBERT H. BRUCE

Delivered by hand
at St. John's, Nfld.
March 12, 1

Exhibit C

IN THE MATTER OF THE PROPOSAL OF NEWFOUNDLAND REFINING COMPANY LIMITED, A BODY CORPORATE, INCORPORATED, ORGANIZED AND EXISTING UNDER THE LAWS OF THE PROVINCE OF NEWFOUNDLAND.

P R O P O S A L

NEWFOUNDLAND REFINING COMPANY LIMITED, the above named Debtor, (the Company), hereby submits the following proposal under the Bankruptcy Act.

1. THAT secured claims shall be paid in accordance with present arrangements existing between the Company and the holders of secured claims or as may be agreed between the Company and the holders of secured claims.

2. THAT payment in priority to all other claims directed by the said Act to be so paid in the distribution of the property of an insolvent person shall be provided for as follows:

Preferred claims, without interest, to be paid in full in priority to all claims of ordinary creditors.

3. THAT provision for payment of all proper fees and expenses of the Trustee and all accounting and legal fees on and incidental to the proceedings arising out of this Proposal and in connection with the preparation of this Proposal, including advice to the Company in connection therewith, shall be made in the following manner:

All such fees and expenses shall be paid in priority to all claims of creditors.

4. THAT provision for payment of all claims of ordinary creditors, being those persons with claims not referred to in Paragraphs 1, 2 and 3 of this Proposal, including claims of every nature and kind whatsoever, whether due or not due for payment as of the date of this Proposal, including contingent or unliquidated claims arising out of any transaction entered into by the Company prior to the date of this Proposal, which creditors shall hereinafter be referred to as "ordinary creditors", shall be made as follows:

All ordinary creditors shall extend the time for payment of their claims on the later of the 30th day of September, 1976, or such date as may be in accordance with present existing arrangements.

5. THAT Coopers & Lybrand Limited of the City of Halifax, in the Province of Nova Scotia, and licenced to act as Trustee in the Province of Newfoundland, shall be the Trustee under this Proposal until the first meeting of creditors, at which meeting the first item of business shall be the appointment of Trustee. This meeting shall be held on or about April 21, 1976.

6. THAT at the meeting of creditors held to consider this Proposal, the creditors may appoint one or more, but not exceeding five persons, as Inspectors under this Proposal whose duties shall be restricted to the following:

(a) On a date to be determined by the Inspectors which date shall be not later than the 15th. day of September, 1976, the Inspectors shall instruct the Trustee to call a meeting of all the creditors of the Company to reconsider the financial situation of the Company and to determine what payments shall be made to the ordinary and preferred creditors and at what times such payments shall be made.

(b) To advise the Company from time to time as to its management and opersations.

(c) To advise the Trustee, from time to time, in connection with such other matters or things relating to the management and operation of the Company's business or the Trustee's actions under this Proposal as the Trustee may, from time to time, request.

7. THE Trustee is authorized however, prior to September 30, 1976, as funds may become available and paid to him by the Company or otherwise received by the Trustee, to make payments to ordinary creditors, subject to Paragraph 2 and 3 herein, on the following basis:

Each creditor shall be entitled to payment of 100% of the first $1,000 of its claim and pro rata with other unsecured creditors on the balance.

8. THAT the moneys payable under this Proposal shall be paid over to the Trustee and the payment thereof shall be secured in the following manner:

Until such time that the Company has completed its obligations under this Proposal, the Company will provide to the Trustee such information as the Trustee may in its discretion require concerning the affairs of the Company without limitation. The Trustee will at all times be entitled to inspect the Company's books, records or other documents and to interview the Company's officers or employees during normal business hours.

To secure payment of its obligations under this Proposal or any subsequent Proposal, the Company will grant to the Trustee for the benefit of all its creditors debenture security on all its assets subordinated to existing security agreements but ranking in priority to all future security agreements. The Trustee shall have the right to further postpone its security interest in favour of new security interest, if the issuance is in the Trustee's discretion deemed in the interest of creditors.

9. IT is an express condition of this Proposal that the Trustee may at any time during the life of this Proposal or following, in the event of bankruptcy upon the default of the Proposal, attack any preference payment of fraudulent conveyance as defined under the Bankruptcy Act, if such payment could have been set aside if the Company had made an assignment in bankruptcy on February 13, 1976, and, without limiting the generality of the foregoing, to apply the provisions of Section 108 and related sections of the said Act if they are deemed applicable.

DATED at St. John's, Newfoundland, this 14th day of March, 1976.

NEWFOUNDLAND REFINING COMPANY LIMITED

PER: _____

_____
(Signature of Company)

_____
SIGNATURE OF WITNESS

Exhibit C

270

IN THE MATTER OF THE PROPOSAL OF NEWFOUNDLAND REFINING COMPANY LIMITED, A BODY CORPORATE, INCORPORATED, ORGANIZED AND EXISTING UNDER THE LAWS OF THE PROVINCE OF NEWFOUNDLAND.

A F F I D A V I T

I, Roy M. Furmark of Brooklyn, New York, in the State of New York in the United States of America, make oath and say that the attached statement and the several lists hereunto annexed and marked "A" to "H" inclusively are to the best of my knowledge and belief a full, true and complete statement of Newfoundland Refining Company Limited's affairs on the 12th. day of March, 1976 and fully disclose all its property of every description in its possession and in reversion as defined by Section 47 of the Bankruptcy Act and subject to information in my possession as of February 29, 1976.

SWORN before me in the City of St. John's, in the Province of Newfoundland, this 12 day of March, 1976.

A Commissioner etc., or
A Notary Public in and
for the Province of
Newfoundland

Roy M. Furmark

SIGNATURE OF
ROY M. FURMARK
EXECUTIVE VICE PRESIDENT

271

Exhibit C

STATEMENT OF AFFAIRS

All data is as of February 29, 1976 except for certain liabilities which are estimated as of March 10, 1976 and are pre-closing of books, unaudited and contains estimates as to a substantial number of the assets and other liabilities as of that date.

IN THE MATTER OF THE PROPOSAL OF
Newfoundland Refining Company Limited
85 Elizabeth Avenue, St. John's, Newfoundland

To The Company:

You are required to complete carefully and accurately this sheet and such of the several sheets attached hereto as are applicable showing the state of your affairs on the date of your proposal viz: the 12 th day of March ,19 76. Such sheets when completed will constitute your Statement of Affairs and must be verified by oath or declaration.

LIABILITIES

(as stated and estimated by debtor) ($000)

1.	Unsecured creditors as per List "A"	$313,706
2.	Secured creditors as per List "B"	$ 2,300
3.	Liabilities on bills or notes endorsed or given for accommodation as per List "C"	$
	Of which it is expected will rank against the estate for dividend	$
4.	Preferred creditors as per List "D"	$
5.	Contingent or other liabilities as per List "E" estimated to rank for	$
	Total liabilities	$316,006
	Surplus	$

ASSETS

(as stated and estimated by debtor) ($000)

(a)	Stock-in-Trade at cost price not exceeding fair market value		$
(b)	Trade Fixtures, fittings, utensils, etc.		$
(c)	Book Debts, etc., as per List "F"		
	Good		$ 200
	Doubtful	$	
	Bad	$	
	Estimated to produce		$
(d)	Bills of exchange, promissory notes, etc., as per List "F1"	$	284,735
(e)	Cash in Bank of		$
(f)	Cash on Hand		$
(g)	Livestock		$
(h)	Machinery, equipment and plant		$
(i)	Real Estate as per List "G"		$ 3,200
(j)	Estimated Value of securities in hands of secured creditors		$
(k)	Furniture		$
(l)	Life policies		$
(m)	Stocks and shares		$
(n)	Reversionary or other interests under wills		$
(o)	Other property, viz.:—		
			$
		$	$
	Amount of capital subscribed	$	
	Amount paid thereon	$	
	Balance subscribed and unpaid		
	Estimated to produce		$
	Total Assets		$288,135
	Deficiency		

212

Exhibit C

"A"

Unsecured Creditors

(The names to be arranged in alphabetical order and numbered consecutively.)

NO.	NAME	ADDRESS	AMOUNT OF CLAIM ($000)
1.	Ataka America Inc. (Atlantic Trading (Delaware) Corp.)	633 Third Avenue N.Y., N.Y.	
2.	See Appendix A		238,200
3.	See Appendix B		75,393
			113
			313,706

NOTE Some of the creditors included herein may qualify as preferred creditors for wages, rents, etc.

In addition some of the amounts included for certain creditors are being contested.

Roy Kirkland

"B"

Secured Creditors

NO.	NAME	ADDRESS	AMOUNT ($000) OF CLAIM	PARTICULARS OF SECURITY	WHEN GIVEN	ESTIMATED VALUE OF SECURITY	ESTIMATED SURPLUS FROM SECURITY	BALANCE OF CLAIM UNSECURED
	Details unavailable at this time, will be supplied later		$2,300	Mortgage on Housing Development at Come-By-Chance, Newfoundland				

Exhibit C

243

"C"

Liabilities on Bills or Notes Endorsed or Given for Accommodation

NO.	NAME OF ACCEPTOR OR MAKER	ADDRESS	DATE WHEN DUE	AMOUNT $	AMOUNT c.	HOLDER'S NAME AND ADDRESS	AMOUNT EXPO... TO RANK AG... ESTATE ... DIVIDE... $
	Not applicable						

Exhibit C

Leigh W. Dingman

Dated March 12

Exhibit C

"D"

Preferred Creditors for Wages, Rent, etc.

NO.	NAME OF CREDITOR	ADDRESS AND OCCUPATION	NATURE OF CLAIM	PERIOD DURING WHICH CLAIM ACCRUED	AMOUNT OF CLAIM		AMOUNT PAYABLE IN FULL		DIFFERENCE RANKING FOR DIVIDEND	
					$	c.	$	c.	$	c.
	See note on Schedule "A"									

March 12 19 76

Exhibit C

215

Exhibit C

"E"

Contingent or Other Liabilities

(Full particulars of all liabilities not otherwise scheduled to be given here)

NO.	NAME OF CREDITOR OR CLAIMANT.	ADDRESS AND OCCUPATION	AMOUNT OF LIABILITY OR CLAIM $	c.	AMOUNT EXPECTED TO RANK FOR DIVIDEND $	c.	DATE WHEN LIABILITY INCURRED MONTH	YEAR	NATURE OF LIABILITY
		The exact nature and amount of contingent liabilities are not determinable at this time.							

Dated March 12 19 76

Wayne Dunnett

"F"

Debts Due to the Estate, Including Book Debts

No.	NAME OF DEBTOR	ADDRESS AND OCCUPATION	NATURE OF DEBT	AMOUNT OF DEBT (000) GOOD $	c.	DOUBTFUL $	c.	BAD $	c.	FOLIO OF LEDGER OR OTHER BOOK WHERE PARTICULARS TO BE FOUND	WHEN CONTRACTED MONTH	YEAR	ESTIMATED TO PRODUCE $	c.	PART OF AMT. SECURED BY BILLS OF SALE
	Court Lines Ltd.			200						NYO					

Exhibit C

Dated March 12 19 76

[illegible]

217

"F1"

Exhibit C

Bills of exchange, promissory notes, lien notes, chattel mortgages, etc., available as assets.

NO.	NAMES OF ALL PROMISSORS ACCEPTORS, ENDORSERS, MORTGAGORS AND GUARANTORS	ADDRESSES	OCCUPATIONS	($000) AMOUNT OF BILL OR NOTE, etc. $	c.	DATE WHEN DUE	ESTIMATED TO PRODUCE $	c.	PARTICULARS OF ANY PROPERTY HELD AS SECURITY FOR PAYMENT OF BILL OR NOTE, etc.
1.	Shaheen Natural Resources Co. Inc.	90 Park Avenue N.Y., N.Y.		46,450		1985			
	The following amounts arise from transactions between affiliated and associated companies, it has not been determined if any right of offset exists between the parties.								
	RECEIVABLE								
1.	Canadian Carribean Oil Co. Ltd.			640					
2.	Founders Corporation			570					
3.	Newfoundland Pulp & Chemical Co. Ltd.			2,235					
4.	Provincial Refining Company Limited			240,670					
5.	SNR Limited (UK)			275					
6.	J.M. Shaheen			520					
				244,910					
	PAYABLE								
7.	SNR Delaware, Inc.			6,625					
	NET			238,285					
	GRAND TOTAL			284,735					

Dated March 12 19 76

Roy Mr Dermark

218

"G"

Real Estate or Immovable Property Owned by Bankrupt.

DESCRIPTION OF PROPERTY	NATURE OF BANKRUPT'S INTEREST	IN WHOSE NAME DOES TITLE STAND	($000) TOTAL VALUE $	c.	PARTICULARS OF MORTGAGES, HYPOTHECS OR OTHER ENCUMBRANCES NAME	ADDRESS	AMOUNT $	c.	EQUITY OR SURPLUS
Houses	Owner	Newfoundland Refining Company Limited	2,900		unavailable at	this time			
Office Building	Owner	"	300		" "	" "			
			3,200						

Dated March 12 19 76

Exhibit C

219

"H"

PROPERTY

Note: Full particulars of every description of property in possession and in reversion as defined by Section 47 of the Bankruptcy Act, not included in any other list, are to be set forth in this list.

FULL STATEMENT AND NATURE OF PROPERTY

NATURE OF PROPERTY	LOCATION	DETAILS OF PROPERTY	ORIGINAL COST	ESTIMATED TO PRODUCE
(a) Stock-in-trade at cost price not exceeding fair market value	NOT APPLICABLE			
(b) Trade Fixtures, fittings, utensils, etc.				
(c) Cash in Bank of at				
(d) Cash on hand				
(e) Livestock at				
(f) Machinery, equipment and plant at				
(g) Household furniture and effects at				
(h) Life Policies				
(i) Stocks and Shares				
(j) Reversionary or other interests under wills, etc.				
(k) Other property (state particulars), viz.				

Dated March 12 19 76

Exhibit C

12d

Exhibit C

281

APPENDIX 14

NEWFOUNDLAND REFINING COMPANY LIMITED
LIABILITIES TO THIRD PARTIES
U.S. BOOKS - U.S. $ UNAUDITED, PRECLOSING

		BALANCE 3/10/76
(SI)	Accounts Payable - Trade	$ 271,618.69
(SI)	Accounts Payable - Marine Operations	13,881,339.49
	Common Brothers Ltd. (Charter Hire Short-fall - PRC) Bamburgh House, Market St. Newcastle Upon Tyne NE1 6JN, England	37,606.36
	Atlas America, Inc. 633 Third Avenue, New York, N.Y. 10017: Notes Payable - Crude	42,000,000.00
	Accrued Interest on 42 MM	6,414,461.52
	Gotaas-Larsen, Inc. (Note Payable) 122 East 42nd St., New York, NY 10017	9,101,304.12
	Court Line Ltd. (Loan Pyable)	3,286,026.28
	Canadian Dept. of National Revenue (W/H Tax) Sir Humphrey Gilbert Bldg. St. John's, Newfoundland AIL 5X 6	400,226,22
		$75,392,582.68

Exhibit C

Newfoundland Refining Company Limited
Accounts Payable - Trade
U.S. Books - U.S. $

	BALANCE 3/10/76
Air Canada P.O. Box /BP 966, Winnipeg, Canada R3C 2V6	$ 52.85
American Inst. of Chemical Engineers 345 E. 47th St., NY, NY 10017	12.23
American Petroleum Institute 1801 K St. N.W., Washington, D.C. 20006	150.00
Auto Hire 7401 Newman Blvd., LaSalle, Que. H8N	1,030.58
Avis Transport of Canada Ltd. 750 Laurentian Blvd., Montreal 379, Que.	754.27
Avis (U.S.A.) P. O. Box 201, Garden City, N.J. 11530	699.96
Bally Haly Golf Club P.O.Box 5656, St. John's, Newfoundland	-
Bell Canada (#7758) P.O. Box/C.P. 8713, Montreal, Que. H3C 3P7	1,329.31
Bell Canada (#1736) P. O. Box/C.P. 8713, Montreal, Que. H3C, 3P7, Que.	33.22
Bell Canada (#8616) CP/PO Box 8712, Montreal H3C 3P6, Quebec	134.60
Benn Bros. Ltd. Lyon Tower, Colliers Wood, London SW19 2JN	89.20
Blue Line Taxis 455 Coventry Rd., Ottawa 7, Ontario	38.59
Better Office Systems 270 Macheren St., K2P OM3 Ottawa, Ont.	-
Brown & Bent 1301 6th Avenue, New York, NY 10019	6,000.00

Exhibit C

285

Newfoundland Refining Company Limited
Accounts Payable - Trade
U.S. Books - U.S. $

	BALANCE 3/10/76
Bureau of National Affairs 1231 25th St. N.W., Washington, D.C. 20037	$ 62.50
Campeau Corp. 2932 Baseline Rd., Box 447, Terminal "A" Ottawa, Ontario KIW 8V5	1,360.05
Canada Wide Parking Service 904 Rue Belmont St., Montreal, Que. H3B 2M4	480.00
Canadian Technical Publ. Ltd.	35.00
Cartier, Inc. 5th Ave. & 52nd St., N.Y., N.Y. 10022	4,349.83
Charles & Co. 1601 Bromdale Ave., Bronx, N.Y. 10462	1,401.95
Christ Cella 160 E. 46th St., N.Y, N.Y. 10017	46.35
Cirkers Moving & Storage 316-322 E. 46th St., N.Y. N.Y. 10017	-
H. Clarkson & Co. Ltd. 52, Bishopgate, London EC2P, 2AD	176.75
Claridges Hotel Brook St., London W 1, England	10,336.27
Collier, Shannon, et al 1666 K St. N.W., Washington, D. C. 20006	2,701.82
Cloud Club 405 Lexington Ave., N.Y.N.Y. 10017	-
Conrad Hilton Hotels 720 Michigan Ave., Chicago, Ill. 60605	-
Corpus Publishers Svc Ltd. 6 Crescent Rd., Toronto, Ontario M4W 1T1	23.95

Exhibit C

Newspaper Printing Company Limited
Accounts Payable - Trade
U.S. Books - U.S. $

	Balance 3/10/76
	$
C.P. Telecommunications (Montreal) P.O. Box 1260 Montreal, Que. H3L 2T8	354.95
C.P. Telecommunications (Ottawa) P.O. Box 1260 Montreal, Que. H3C 2Z8	539.90
Creative Printers & Publishers Water Street West St. John's, Nfld. (Box 967)	-
Curtis,Dawe, Fagan, et al Royal Trust Bldg. St. John's, Nfld. A1C 5J9	32,872.68
The Daily News	-
John DeNigris Assoc. 25 Broad St. New York, N.Y. 10004	1,635.48
Dewey, Balantine, et al 140 Broadway New York, N.Y. 10005	11,236.90
Dunhill International List Co. 444 Park Avenue South New York, N.Y. 10016	111.00
Emery Air Freight P.O. Box 7 Scranton, Pa. 18501	44.50
F.T. Business Enterprises Brocken House, Connon Street London EC4P 4BY, England	30.00
Forrest Sign Co. 949 Second Avenue New York, N.Y. 10022	21.60
Bernarde Gagne Co., Ltd.	70,682.57

Exhibit C

Accounts Payable - Trade
U.S. Books - U.S. $

	Balance 3/10/76
Goodyear Printing & Stationery 122 E. 42nd St., N.Y. N.Y. 10017	$ -
Cross & Brown 522 Fifth Ave., N.Y.N.Y. 10036	24,992.58
Hydro Quebec 500 Rue Fullum CP 6072 Montreal H3C 3G3	74.96
Gulf Publishing Co. P.O. Box 2608, Houston, Texas 77001	4.00
Hotel Newfoundland St. John's, Newfoundland AIC 5W8	29.16
IBM Canada Ltd. (Ottawa) 1150 Egleston Ave., E.Don Mills, Ont. M36 1H	-
IBM Canada Ltd. (Montreal) P. O. Box /CD 453 Sta. Q, Toronto, Ont. M47 2R6	-
IBM U.S.A. P. O. Box 147, Dept. 23 N, Madison Sq. Sta. New York, New York 10022	106.81
Independent Printing Co. Inc. 215 E. 42nd St., New York, NY 10017	442.04
I.T.T. World Communications P.O. Box 4067, Church St. Station, NY NY 10249	53.99
Johnsons Ltd. 155 Dorchester Blvd., Montreal, Quebec	85.67
Journal of Commerce	64.00
Litton Educational Publishers P.O. Box 1517, Cincinnati, Ohio 452	27.63
McLean Group 45 Charles St. East, Toronto, Ont. M4Y 1S2	28,657.20
MacLean-Hunter Ltd. 481 University Ave., Toronto, Ont. M5W 1A7	3,330.00

Exhibit C

280

Newfoundland Refining Company Limited
Accounts Payable - Trade
U.S. Books - U.S. $

	BALANCE 3/10/76
Metropolitan Calculator System 600 3rd Avenue, NY, NY 10016	$ 84.24
City of Montreal - Finance Dept. Revenue Div., City Hall, Montreal	20.00
Mudge, Rose, et al 20 Broad St., New York, N.Y.	15,839.79
Murray Hill Limousine 1580 Rue Bane, Montreal P3C 1N4	23.00
National Investment Library 80 Wall St., New York, NY 10005	146.39
Newrock Reporting	221.85
Oil Daily (Advertising) (Subscriptions) P.O. Box 13206 Church St. Station New York, New York 10249	11,164.00 -
Ottawa Journal 365 Laurier Ave., W., Ottawa, Ont. K1G 3K6	-
Pine Hill Crystal Spring Water 517 E. 132nd St., Bronx, New York 10454	78.19
Pitney-Bowes 150 Ferrand Dr., Don Mills, Ontario M3K 3B5	38.07
Platts Oilgram News Service Box 412, Highstown, N. J. 08520	800.00

Exhibit C

Accounts Payable - Trade

U.S. Books - U.S. $$

Vendor	Balance - 3/10/75
Prentice Hall Corp. System	$ 75.00
Procon Ltd. Greater London House Hampstead Road London NW1 7SB, England	20,141.79
Canadian Business Magazine 1080 Beaver Hall Hill Montreal, Quebec H2Z 1T2	8.00
Shipping Guides Ltd. Parelic House, 25 Wormwood Street London EC2 England	115.95
Wm. A. Taylor Ltd. 95 Madison Avenue New York, New York 10016	1,195.97
Telesan 110 John Street New York, New York, 10038	65.28
TAS Communications 151 Sparks St. Ottawa, Ontario K1P 5E3	79.00
Telex Int'l-Barnford Publishers Ltd. 27 Madox Street London W1R 9LE, England	147.00
Trizec Equities Ltd. Place Ville Marie Montreal, Quebec H3B 2G6	2,007.50
U.O.P. 30 Algonquin Road Des Plaines, Illinois 60016	2,189.00
Waldorf Astoria Park and 50th. Street New York, New York 10022	(21.69)

Exhibit C

288

Vendor	Balance - 3/10/76
City of Ottawa Collection Branch Finance Department 111 Sussex Drive Ottawa, Ontario K1N 5A1	$ 193.03
Western Union International Box 6247, Church Street Sta. New York, New York 10008	305.75
Western Union Telegraph Co. Box 6247, Church Street Sta. New York, New York 10008	46.60
White Hart Inn Salisbury, Conn. 06068	17.49
Xerox of Canada (Montreal) 1Westmont Square Westmont, Quebec H3Z 2P9	264.60
Xerox of Canada (Ottawa) Carling Square 11 785 Carling Avenue Ottawa K1S 5A4	101.20
Xerox Corp. (U.S.A.) P.O. Box 8787 Church Street Station New York, New York 10049	54.44
Paul Boyd 1155 Dorchester Blvd. West Montreal, Quebec - Suite 510	9,275.35
Oil Buyers Guide P.O. Box 998 Lakewood, N.J. 08701 U.S.A.	245.00
	$271,618.69

Exhibit C

Newfoundland Refining Company Limited
Marine Operations Payable
U.S. Books - U.S. $

	BALANCE 3/10/76
Ataka America, Inc. 633 Third Ave., New York, N.Y. 10017: (a) Commissions (b) Bunkers (c) Interest	$ 710,852.94 4,075,065.55 603,002.95
B.P. Marine International 620 Fifth Ave., N.Y., N.Y. 10020	900.90
B.T.A. Ltd. Wolfe Tone Square, Bantry Co., Cork, Ireland	162.69
Common Bros. U.S.A. Ltd. 61 Broadway, N.Y. N.Y. 10016	11,049.77
Cory Limaos - Rio de Janiero Ave. Rio Branco, 4-11 ander Caixa Postal 774-ZC-00	1,204.80
Gotaas-Larsen, Inc. 122 E. 42nd St., N.Y., N.Y. 10017	(.47)
Gray, Mackenzie & Company Limited P.O. Box 70, Duboi, United Arab Emirates	17,593.58
Kuwait Oil Tankers Co. S.A.K. P. O. Box 7055, Fahaheel, Kuwait, Arabia	143,497.83
Marine Agents & Brokers Ltd. P. O. Box F2638, Freeport, Bahamas	4,365.03
E. H. Munday & Co. (Baharnas) Limited P. O. Box F-2492, Freeport, Bahamas	20,026.18
Barry Rogliano & Cie Soc. Anonyme an Capital de 773500F R.C. Marseille 58 B898	1,151.62
Sanko Steamship Co. Ltd 12-1 Yurakucho 1 Chome Chiyoda-Ku, Tokyo, Japan	8,226,027.36

Exhibit C

290

Newfoundland Refining Company Limited
Marine Operations Payable
U.S. Books - U.S. $

	BALANCE 3/10/76
C.F. Sharp & Company 7, Nilon Odori, Naka-Ku, Yokohama, Japan	$ 196.3
Hugo Trumpy I 16124 Genoa, 10, Via San Siro	(1,848.77
Warfield-Dorsey Co., Inc. 20 E. Susquehanna Ave. Baltimore, Md. 21204 U.S.A.	30,607.01
Charles R. Weber Company 630 Fifth Ave., N.Y. N.Y. 10020	
Usuf Bin Ahmed Kanoo P. O. Box 290, Dubai, U.A.E.	31,464.22
	$13,881,339.49

Consumer and Corporate Affairs

Bankruptcy

EXHIBIT D

291

NOTICE TO THE TRUSTEE ACTING IN A PROPOSAL MADE BY AN INSOLVENT PERSON
(Sec. 12 (1), 42 (1))

AVIS AU SYNDIC NOMMÉ DANS UNE PROPOSITION DÉPOSÉE PAR UNE PERSONNE INSOLVABLE
(Art. 12 (1), 42 (1))

In the matter of the proposal of: Dans l'affaire de la proposition de:

Estate Name – Nom de l'actif	Trustee – Syndic
Provincial Refining Company Limited	Coopers & Lybrand Limited

Official Receiver – Séquestre officiel	Division No. – N° de la division	District
Ronald B. Twohig	–	Newfoundland

Date filed – Date de dépôt	Security Deposit – Cautionnement	Date
12 | 03 | 76 (D-J M Y-A)	$ [illegible]	12 | 03 | 76 (D-J M Y-A)

I, an Official Receiver in and for this Bankruptcy Division, do hereby certify:

That you, the trustee acting in re the proposal of this estate, filed with me the said proposal pursuant to the provisions of section 42(1) of the Bankruptcy Act;

You, the trustee of this estate, are required pursuant to Section 12(1) of the said Act to deposit with me security in the sum above within seven days from the date hereof.

Je soussigné, séquestre officiel dans et pour la présente Division de faillite, certifie par les présentes:

Qu'en qualité de syndic vous m'avez produit une copie de la proposition susdite conformément aux dispositions de l'article 42(1) de la loi sur la Faillite.

Que vous êtes requis, conformément à l'article 12(1) de ladite loi, de déposer entre mes mains, d'ici sept jours, un cautionnement au montant indiqué en rubrique.

CANADA BANKRUPTCY ACT LOI SUR LA FAILLITE TIME HEURE 12 MAR 1976 11:57 AM NEWFOUNDLAND TERRE-NEUVE OFFICIAL RECEIVER - SÉQUESTRE OFFICIEL

Official Receiver – Séquestre officiel
Ronald B. Twohig

CCA 565 (10) 731

Exhibit D

292

410 Duke Street Tower
Scotia Square
Halifax, N.S.

March 12, 1976

Ronald B. Twohig
Official Receiver
Bankruptcy Division
Department of Consumer & Corporate Affairs

Dear Mr. Twohig:

I am filing herewith a Proposal under the Bankruptcy Act, today lodged with me by Provincial Refining Company Limited together with a statement showing the financial position of the debtor at the date of the Proposal.

Also enclosed is a copy of the shareholders' resolutions authorizing the making of the Proposal.

Yours very truly,

ROBERT H. BRUCE

Delivered by hand
at St. John's, Nfld.
March 12, 1976.

Exhibit D

293

PROVINCIAL BUILDING COMPANY LIMITED

90 Park Avenue
New York, New York, 10016

March 12, 1976

Robert H. Bruce, Esq.,
Vice President
Coopers & Lybrand Limited
410 Duke Street Tower
Scotian Square
Halifax, N.S.

Dear Mr. Bruce:

We herewith lodge with you, an original and two copies of a Proposal under the Bankruptcy Act and a statement showing the financial position of the debtor at the date of the Proposal.

Also enclosed are three copies of the shareholders' resolutions authorizing the making of the Proposal.

Yours very truly,

Roy M. Furmark

ROY M. FURMARK
EXECUTIVE VICE PRESIDENT

Delivered By Hand
at St. John's, Nfld.
March 12, 1976.

R.H. Bruce

Exhibit D

IN THE MATTER OF THE PROPOSAL OF PROVINCIAL REFINING COMPANY LIMITED, A BODY CORPORATE, INCORPORATED, ORGANIZED AND EXISTING UNDER THE LAWS OF THE PROVINCE OF NEWFOUNDLAND.

P R O P O S A L

PROVINCIAL REFINING COMPANY LIMITED, the above named Debtor, (the Company), hereby submits the following proposal under the Bankruptcy Act.

1. THAT secured claims shall be paid in accordance with present arrangements existing between the Company and the holders of secured claims or as may be agreed between the Company and the holders of secured claims.

2. THAT payment in priority to all other claims directed by the said Act to be so paid in the distribution of the property of an insolvent person shall be provided for as follows:

Preferred claims, without interest, to be paid in full in priority to all claims of ordinary creditors.

3. THAT provision for payment of all proper fees and expenses of the Trustee and all accounting and legal fees on and incidental to the proceedings arising out of this Proposal and in connection with the preparation of this Proposal, including advice to the Company in connection therewith, shall be made in the following manner:

All such fees and expenses shall be paid in priority to all claims of creditors.

4. THAT provision for payment of all claims of ordinary creditors, being those persons with claims not referred to in Paragraphs 1, 2 and 3 of this Proposal, including claims of every nature and kind whatsoever, whether due or not due for payment as of the date of this Proposal, including contingent or unliquidated claims arising out of any transaction entered into by the Company prior to the date of this Proposal, which creditors shall hereinafter be referred to as "ordinary creditors", shall be made as follows:

All ordinary creditors shall extend the time for payment of their claims to the later of the 30th. day of September, 1976, or such date as may be in accordance with present existing arrangements.

5. THAT Coopers & Lybrand Limited of the City of Halifax, in the Province of Nova Scotia, and licenced to act as Trustee in the Province of Newfoundland, shall be the Trustee under this Proposal until the first meeting of creditors, at which meeting the first item of business shall be the appointment of Trustee. This meeting shall be held on or about April 21, 1976.

6. THAT at the meeting of creditors held to consider this Proposal, the creditors may appoint one or more, but not exceeding five persons, as Inspectors under this Proposal whose duties shall be restricted to the following:

(a) On a date to be determined by the Inspectors which date shall be not later than the 15th. day of September, 1976, the Inspectors shall instruct the Trustee to call a meeting of all the creditors of the Company to reconsider the financial situation of the Company and to determine what payments shall be made to the ordinary and preferred creditors and at what times such payments shall be made.

(b) To advise the Company from time to time as to its management and opersations.

(c) To advise the Trustee, from time to time, in connection with such other matters or things relating to the management and operation of the Company's business or the Trustee's actions under this Proposal as the Trustee may, from time to time, request.

7. THE Trustee is authorized however, prior to September 30, 1976, as funds may become available and paid to him by the Company or otherwise received by the Trustee, to make payments to ordinary creditors, subject to Paragraph 2 and 3 herein, on the following basis:

Each creditor shall be entitled to payment of 100% of the first $1,000 of its claim and pro rata with other unsecured creditors on the balance.

8. THAT the moneys payable under this Proposal shall be paid over to the Trustee and the payment thereof shall be secured in the following manner:

Until such time that the Company has completed its obligations under this Proposal, the Company will provide to the Trustee such information as the Trustee may in its discretion require concerning the affairs of the Company without limitation. The Trustee will at all times be entitled to inspect the Company's books, records or other documents and to interview the Company's officers or employees during normal business hours.

Exhibit D

To secure payment of its obligations under this Proposal or any subsequent Proposal, the Company will grant to the Trustee for the benefit of all its creditors debenture security on all its assets subordinated to existing security agreements but ranking in priority to all future security agreements. The Trustee shall have the right to further postpone its security interest in favour of new security interest, if the issuance is in the Trustee's discretion deemed in the interest of creditors.

9. IT is an express condition of this Proposal that the Trustee may at any time during the life of this Proposal or following, in the event of bankruptcy upon the default of the Proposal, attack any preference payment or fraudulent conveyance as defined under the Bankruptcy Act, if such payment could have been set aside if the Company had made an assignment in bankruptcy on February 13, 1976, and, without limiting the generality of the foregoing, to apply the provisions of Section 108 and related sections of the said Act if they are deemed applicable.

DATED at St. John's, Newfoundland, this 12th day of March, 1976.

PROVINCIAL REFINING COMPANY LIMITED

PER: _____

_____
(Signature of Company)

_____
SIGNATURE OF WITNESS

IN THE MATTER OF THE [illegible] PROVINCIAL REFINING COMPANY LIMITED, A [illegible] OF [illegible] INCORPORATED AND EXISTING UNDER THE LAWS OF THE [illegible] NEWFOUNDLAND.

297

Exhibit D

AFFIDAVIT

I, Roy M. Furmark of Brooklyn, New York, in the State of New York in the United States of America, make oath and say that the attached statement and the several lists hereunto annexed and marked "A" to "H" inclusively are to the best of my knowledge and belief a full, true and complete statement of Provincial Refining Company Limited's affairs on the 12th. day of March, 1976, and fully disclose all its property of every description in its possession and in reversion as defined by Section 47 of the Bankruptcy Act and subject to information in my possession as of February 29, 1976.

SWORN before me in the City of St. John's, in the Province of Newfoundland, this 12 day of March, 1976.

A Commissioner etc., or
A Notary Public in and
for the Province of
Newfoundland

Roy M. Furmark

SIGNATURE OF
ROY M. FURMARK,
EXECUTIVE VICE PRESIDENT

Johnsons Limited 7,481.26

BEST COPY AVAILABLE

Exhibit D

IN THE MATTER OF THE PROPOSAL OF PROVINCIAL REFINING COMPANY LIMITED, A BODY CORPORATE, INCORPORATED, ORGANIZED AND EXISTING UNDER THE LAWS OF THE PROVINCE OF NEWFOUNDLAND.

AFFIDAVIT

I, Roy M. Furmark of Brooklyn, New York, in the State of New York in the United States of America, make oath and say that the attached statement and the several lists hereunto annexed and marked "A" to "H" inclusively are to the best of my knowledge and belief a full, true and complete statement of Provincial Refining Company Limited's affairs on the 12th. day of March, 1976, and fully disclose all its property of every description in its possession and in reversion as defined by Section 47 of the Bankruptcy Act and subject to information in my possession as of February 29, 1976.

SWORN before me in the City of St. John's, in the Province of Newfoundland, this 12 day of March, 1976.

A Commissioner etc., or
A Notary Public in and
for the Province of
Newfoundland

Roy M. Furmark

SIGNATURE OF
ROY M. FURMARK,
EXECUTIVE VICE PRESIDENT

and contains estimates as to a substantial number of the assets and liabilities as of that date.

IN THE MATTER OF THE PROPOSAL OF

Provincial Refining Company Limited
65 Elizabeth Avenue, St. John's, Newfoundland

To The Company:

You are required to complete carefully and accurately this sheet and such of the several sheets attached hereto as are applicable showing the state of your affairs as the date of your proposal, viz: the 12 th. day of March ,19 76. Such sheets when completed will constitute your Statement of Affairs and must be verified by oath or declaration.

LIABILITIES
(as stated and estimated by debtor) ($000)

1. Unsecured creditors as per List "A"	$ 310,113
2. Secured creditors as per List "B"	$ 204,020
3. Liabilities on bills or notes endorsed or given for accommodation as per List "C"	$
Of which it is expected will rank against the estate for dividend	$
4. Preferred creditors as per List "D"	$
5. Contingent or other liabilities as per List 'E' estimated to rank for	$
Total liabilities	$514,133
Surplus	$134,762

ASSETS
(as stated and estimated by debtor) ($

(a) Stock-in-Trade at cost price not exceeding fair market value		
(b) Trade Fixtures, fittings, utensils, etc.		
(c) Book Debts, etc., as per List "F"		
Good		
Doubtful	$	
Bad	$	
Estimated to produce		
(d) Bills of exchange, promissory notes, etc., as per List "F1"	$	
(e) Cash in Bank of Various		
(f) Cash on Hand		
(g) Livestock		
(h) Machinery, equipment and plant Replacement Cost		
(i) Real Estate as per List "G"		
(j) Estimated Value of securities in hands of secured creditors		
(k) Furniture		
(l) Life policies		
(m) Stocks and shares		$
(n) Reversionary or other interests under wills		$
(o) Other property, viz.:—		
		$
	$	$
Amount of capital subscribed	$	
Amount paid thereon	$	
Balance subscribed and unpaid		
Estimated to produce		$
Total Assets		$643,895
Deficiency		$

Exhibit D

29

"A"

Unsecured Creditors

(The names to be arranged in alphabetical order and numbered consecutively.)

NO.	NAME	ADDRESS	AMOUNT OF CLAIM ($000's)
1.	Newfoundland Refining Company Limited	85 Elizabeth Street, St. John's, Newfoundland	243,574
2.	SNR Delaware, Inc.	90 Park Avenue, N.Y., N.Y. 1002	[illegible]
3.	Unsecured creditors carried on New York office books - per Appendix A		[illegible]
4.	Unsecured creditors carried on Come-By-Chance books - per Appendix B		9,[illegible]
5.	Estimated additional liabilities not included in above schedules, principally relating to accrued liabilities and additional liabilities arising in February, 1976, Details to be supplied.		[illegible]
			[illegible]

NOTE Some of the creditors included at Nos. 3 to 5 may qualify as preferred creditors for wages, rents, etc.

In addition, some of the amounts included for certain creditors are being contested.

Exhibit D

Dated March 12 19 76

[illegible]

3[illegible]

"B"

Secured Creditors

NO.	NAME	ADDRESS	($000) AMOUNT OF CLAIM	PARTICULARS OF SECURITY	WHEN GIVEN	ESTIMATED VALUE OF SECURITY	ESTIMATED SURPLUS FROM SECURITY	BALANCE OF CLAIM
1.	Government of Canada	P.O. Box 2247 Halivax, N. S.	24,000	Marine Wharf				
2.	Government of Newfoundland and Labrador	Dept. of Finance St. John's, Nfld.	44,400	2nd Mortgage on Refinery				
3.	Kleinwort Benson Limited	20 Fenchurch St. London, EC3P3DB	78,600	1st mortgage on Refinery				
4.	SNR Dover Incorporated	90 Park Avenue N.Y., N.Y. 10016	26,300 173,300	1st mortgage on Refinery				
5.	Ataka America, Inc. (Atlantic Trading (Delaware Corp)	633 Third Avenue New York , N.Y.	30,720	Crude Oil and Refinery Products				
			204,020					

* Including Accrued Interest.

Exhibit D

301

Exhibit D

Liabilities on Bills or Notes Endorsed or Given for Accommodation

NO.	NAME OF ACCEPTOR OR MAKER	ADDRESS	DATE WHEN DUE	AMOUNT $	AMOUNT c.	HOLDER'S NAME AND ADDRESS	AMOUNT EXPECTED TO RANK AGAINST ESTATE FOR DIVIDEND $	AMOUNT EXPECTED TO RANK AGAINST ESTATE FOR DIVIDEND c.
	Not applicable							

March 10 19 76

Signature of Debtor

302

"D"

Preferred Creditors for Wages, Rent, etc.

NO.	NAME OF CREDITOR	ADDRESS AND OCCUPATION	NATURE OF CLAIM	PERIOD DURING WHICH CLAIM ACCRUED	AMOUNT OF CLAIM $	AMOUNT OF CLAIM c.	AMOUNT PAYABLE IN FULL $	AMOUNT PAYABLE IN FULL c.	DIFFERENCE RANKING DIVIDEND $
	See note on Schedule "A"								

Exhibit D

303

"E"

Contingent or Other Liabilities

(Full particulars of all liabilities not otherwise scheduled to be given here)

NO.	NAME OF CREDITOR OR CLAIMANT	ADDRESS AND OCCUPATION	AMOUNT OF LIABILITY OR CLAIM $	AMOUNT OF LIABILITY OR CLAIM c.	AMOUNT EXPECTED TO RANK FOR DIVIDEND $	AMOUNT EXPECTED TO RANK FOR DIVIDEND c.	DATE WHEN LIABILITY INCURRED MONTH	DATE WHEN LIABILITY INCURRED YEAR	NATURE OF LIABILITY
		The exact nature and amount of contigent liabilities are not determinable at this time.							

Dated at Richland 19 26

Exhibit D

304

"F1"

Bills of exchange, promissory notes, lien notes, chattel mortgages, etc., available as assets.

NO.	NAMES OF ALL PROMISSORS ACCEPTORS, ENDORSERS, MORTGAGORS AND GUARANTORS	ADDRESSES	OCCUPATIONS	AMOUNT OF BILL OR NOTE, etc. $	c.	DATE WHEN DUE	ESTIMATED TO PRODUCE $	c.	PARTICULARS OF ANY PROPERTY HELD AS SECURITY FOR PAYMENT OF BILL OR NOTE, etc.
	Not Applicable								

Exhibit D

Dated March 12 19 26

Roy Ly Dimmick

8000

"P"

Exhibit D

Debts Due to the Estate, including Book Debts

No.	NAME OF DEBTOR	ADDRESS AND OCCUPATION	NATURE OF DEBT	AMOUNT OF DEBT — GOOD $	GOOD c.	DOUBTFUL $	DOUBTFUL c.	BAD $	BAD c.	FULL PARTICULARS OF DEBT, WHERE LEDGER OR OTHER BOOK REFERRED TO, OR WHERE PARTICULARS TO BE FOUND	WHEN CONTRACTED — MONTH	WHEN CONTRACTED — YEAR	ESTIMATED TO PRODUCE $	ESTIMATED TO PRODUCE c.	PAST DUE DEBTS WHICH ARE CONSIDERED GOOD BY THE DEBTOR
..	Blue Peter Steamship	Come-By-Chance Port Agents	Various Services Products	(000) 430						CBC					
..	First National Bank of Chicago	Chicago, Illinois	Misc	48						N/O					
..	Gulf Oil Trading Co. Ltd.	P.O. Box 2012 Hamilton, Bermuda	Product Sale	2,800											
.	Canadian Fuel Marketers	1 Valley Brook Drive Don Mills, Ontario	"	3,100											
.	Ataka America, Inc.	633 Third Avenue NY., NY.	conversion charge	1,500											
.	Trumbull Asphalt Company of Delaware	59th. & Archer Road Summit, (Argo, P.O.) Ill.	product sale	750											
.	Carbonit Belgium SA c/o Carbonit America Inc.	375 Park Avenue NY., N.Y. 10016		850											
.	BP North America, Inc.	620 Fifth Avenue N.Y., N.Y., 10016	product sale	130											
.	Amerada Hess Shipping Corporation	1185 Avenue of Americats N.Y ., N.Y. 10036	ship Relet	85											
.	Siga Holdings Ltd. c/o Lundrigans, Ltd.	Corner Brook	Product Sale	60											
.	Imperial Oil Ltd.	111 St. Clair Avenue West, Toronto, Ont.	Product Sale	165											

FORWARD NEXT PAGE 9,918

Dated March 19 24

Kaylyn Summerhill

300

"F"

Debts Due to the Estate, including Book Debts

NO	NAME OF DEBTOR	ADDRESS AND OCCUPATION	NATURE OF DEBT	AMOUNT OF DEBT — GOOD $ ($000)	GOOD c.	DOUBTFUL $	DOUBTFUL c.	BAD $	BAD c.	FOLIO OF LEDGER OR OTHER BOOK WHERE PARTICULARS TO BE FOUND	WHEN CONTRACTED MONTH YEAR	ESTIMATED TO PRODUCE $	ESTIMATED TO PRODUCE c.	PART OF AMT. SECURED BY BILLS
12.	Branch Lines Limited	P.O.Box 54 Sorel, Quebec	Product Sale	18						NYO				
13.	Caleb-Brett	644 Guinoud Blvd. Longueuil, Quebec	"	31										
14.	Burmah-Oil Tankers Ltd.	1185 Avenue of Americas N.Y.,N.Y., 1003	"	28										
	TOTAL - This Page			77										
	- Preceding Page			9,918										
	GRAND TOTAL			9,995										

Dated March 10 1976

Exhibit D

307

"G"

Real Estate or Immovable Property Owned by Bankrupt.

DESCRIPTION OF PROPERTY	NATURE OF BANKRUPT'S INTEREST	IN WHOSE NAME DOES TITLE STAND	TOTAL ($000)E		PARTICULARS OF MORTGAGES, HYPOTHECS OR OTHER ENCUMBRANCES			
					NAME	ADDRESS	AMOUNT	
			$	c.			$	c.
REFINING AND MARINE FACILITIES LOCATED AT COME-BY-CHANCE NEWFOUNDLAND	OWNER	PROVINCIAL REFINING COMPANY LIMITED	600,000	(1)	See items	1 to 4 on Shcedule "B"		

(1) Estimated replacement cost

Exhibit D

308

Dated March 12 19 76

Wayne Dinsmore

"A"

PROPERTY

Note: Full particulars of every description of property in possession and in reversion as defined by Section 47 of the Bankruptcy Act, not included in any other list, are to be set forth in this list.

FULL STATEMENT AND NATURE OF PROPERTY

NATURE OF PROPERTY	LOCATION	DETAILS OF PROPERTY	ORIGINAL COST ($000)	ESTIMATED TO PRODUCE
(a) Stock-in-trade at cost price not exceeding fair market value	Come-By-Chance Newfoundland	Crude Oil and Refined Petroleum Products	34,300	34,300
(b) Trade Fixtures, fittings, utensils, etc.	Come-By-Chance Newfoundland	Materials and Supplies	3,500	3,500
(c) Cash in Bank of at	Various	Checking Accounts	1,100	1,100
(d) Cash on hand				
(e) Livestock at	Come-By-Chance Newfoundland	Refinery and Marine Facilities	239,000	500,000 (1
(f) Machinery, equipment and plant at				
(g) Household furniture and effects at				
(h) Life Policies				
(i) Stocks and Shares				
(j) Reversionary or other interests under wills, etc.				
(k) Other property (state particulars), viz.				

(1) Replacement cost

Dated March 12 19 76

Exhibit D

309

Exhibit D

310

[illegible] Shipping Company Limited

Accounts Payable - N. Y. Office

Preliminary - 2/29/76

Vendor	Balance - 2/29/76
Acme Visible Records Inc.	$ 34.80
Air Canada	78.72
Albury & Company	16,296.12
Anco Tanker Service Inc.	11,239.55
Atlantic Pilotage Authority	185.94
Abu Dhabi - Marine	1,051.87
B. P. North America	2,866.28
Blue Peter Steamships Ltd.	2,488.94
Branch Lines Ltd.	80,890.43
Burmah Oil Tankers Ltd.	2,103,582.66
B.P. Trading	235,822.30
Caleb Brett (Canada) Ltd.	2,566.65
Cambell & Gardiner	944.75
Canadian Fuel Marketers	2,586,791.11
Carbonit Curacao	9,051.24
Catalysts & Chemicals Inc.	8,753.69
Chicago Testing Labs	1,495.00
Commerce Reporting Co.	107.50
Commercial Publishing Co.	787.28
Colonial Broadcasting System Ltd.	1,120.00
Coopers & Lybrand	3,600.00
Common Bros. (Management) Ltd.	1,346,637.44
Common Bros. U.S.A. Ltd.	46,532.44
Copeland Co. Inc.	63.50
Wm. Cotts & Co.	807.56
Corco Commonwealth Oil	3,524.77
Elder Dempster (Canary Islands) Ltd.	6,053.44
Eastern Canada Towing Ltd.	275,149.35
Gotaas-Larsen Inc.	620,322.41
Gov't. of Canada - Rec. Gen'l	5.00
Granges Shipping	2,160,682.44
Gulf Oil Canada Ltd. (Montreal)	58.90
Gulf Oil Company (N. Y.)	3,037,875.48
Hill Corporation Shipping Ltd. (Halco)	160,748.01
Imperial Oil Ltd.	32,641.25
Iraqui Maritime Transport Co.	18,610.72
Irving Trust	15.45
Jacob & Partners	9,475.05
Joe Oil Inc.	11,503.30
Johnsons Limited	7,481.26

Exhibit D

311

P.E.G. Accounts Payable - 2/29/76

Vendor	Balance - 2/29/76
Wm. H. Kennedy & Co. Ltd.	$ 191.30
Kent Line Ltd.	8,000.00
Kuwait Oil Tankers	30,193.49
Lavino Shipping Co.	3,485.22
London Shipbuilding Co.	1,529,968.29
Mabanaft GMBH	1,413.64
Mammoth Bulk Carriers Ltd.	3,460.63
Marine Transport Lines Inc.	391,786.75
Chas. Martin & Co. (Canada) Ltd.	8,426.75
Kitz, Matheson, Green & MacIsaac	8,693.03
I.H. Mathers & Son Ltd.	8,187.08
Robert L. Merwin	54.15
Mudg, Rose, Guthrie & Alexander	32,075.46
Natomas of Canada Ltd.	669.72
A. Anker Nilsen	130.31
PR Newswire	135.00
P.A. (Int'l) Management Consultants	2,273.46
Poling Transport Co.	9,539.80
PVM Oil Associates	2,415.72
Ramsey Greig	32,805.15
Roosevelt Hotel	205.23
P.S. Ross & Partners	10,194.93
Royal Bank of Canada (N.Y.)	5.00
Roy-L Canadian Fuels Ontario Ltd.	126.00
Ruys & Co.	44,370.29
Sanko Steamship Co. Ltd.	1,183,333.78
E.W. Saybolt & Co. Inc.	1,998.12
Seabrokers Inc.	6,722.52
Skarrup Chartering Corp.	116.16
Southern Overseas Corp.	208.50
Sydney & Webster Appraisal Corp.	45,291.98
Superintendence Co. (Can.) Ltd.	2,358.77
Sacor	253,792.60
Techmont Crosbie Services	13,779.43
Trumbull Asphalt Co.	12,313.87
TWA Air Freight	2.46
UOP Process Division	418.85
Warfield Dorsey Co., Inc.	38,968.24
Thomas Watkins, Chb.	195.50
Charles R. Weber	16,433.00
P.D. Wharfage & Transportation	12,250.42
Yusuf Bin Ahmed Kanoo	2,056.54

Exhibit D

P. R. C. Accounts Payable - 2/29/76

	Vendor	Balance - 2/29/76
	Ataka America Inc. - Interest	$2,245,401.01
	Ataka America Inc. - Bank Charges	4,827,217.74
	Ataka America Inc. - Bunkers	2,830,747.74
(CAN.$)	J.P.S. Engineering Co.	1,593.29
"	Procon (GB) Ltd.	12,242,507.56
"	Eastern Canada Towing	15,593.91
~~→~~	~~Johnson Ltd.~~	~~1,241,127.42~~
		~~$67,880.25~~ 249,000.00
"	Cafo Ltd.	
		$38,939,116.03

EXHIBIT E

315

1976 No. 338

IN THE SUPREME COURT OF THE PROVINCE OF NEWFOUNDLAND

COURT OF APPEAL

IN THE MATTER OF

The Bankruptcy Act
Chap. B-3, R.S.C. 1970

AND IN THE MATTER OF

Newfoundland Refining
Company Limited

NOTICE OF APPEAL AND APPLICATION FOR LEAVE TO APPEAL

TAKE NOTICE that Newfoundland Refining Company Limited appeals from the Order of The Honourable Chief Justice of the Trial Division herein made on the 12th. day of March, A.D., 1976 granting a Receiving Order against Newfoundland Refining Company Limited and if leave is necessary applies for leave to appeal from the said Order and that the Court will be moved on Tuesday, the 6th. day of April, A.D., 1976 at 10:30 o'clock in the forenoon or so soon thereafter as Counsel can be heard by Aubrey L. Bonnell of Counsel for Newfoundland Refining Company Limited for a day to be set for the hearing of the within Appeal and that the grounds for the Appeal are that the said Order is contrary to the evidence, the weight of evidence and the law, particulars of which are as follows:

1. The learned Trial Judge erred in failing to hold that upon filing a proposal to creditors by the Debtor all proceedings including the Petition before him were stayed;

2. The learned Trial Judge was in holding that section 49 (1) of the Bankruptcy Act, Chapter B-3, R.S.C. 1970, had no application to proceedings by way of Petition for a Receiving Order;

3. The learned Trial Judge erred in granting a Receiving Order when he had lost jurisdiction by reason of the filing of the aforesaid proposal;

4. The learned Trial Judge erred by arriving at the decision referred to in Ground 2 herein without hearing argument;

5. The learned Trial Judge erred in failing to impose a stay pursuant to the provisions of Section 25(10) pending resolution of a dispute as to the effect of certain agency agreements dated September 20, 1973, and other agreements between the parties;

6. The learned Trial Judge erred in holding that the aforesaid agreements were merely agreements to make an agreement;

7. The learned Trial Judge erred in granting the Receiving Order in the face of the aforesaid agreements;

8. The learned Trial Judge erred in failing to hold that the petitioning creditor was using the Petition to obtain a collateral advantage or for an improper purpose;

9. The learned Trial Judge erred in rejecting material evidence on the aforesaid issue;

10. The learned Trial Judge erred in holding that the Petitioner had established the existence of a debt exceeding $1000.00 and that the Debtor had committed an act of bankruptcy in the 6 months immediately preceding the filing of the Petition;

11. The learned Trial Judge erred in relying upon the filing of the proposal as evidence of an act of bankruptcy;

12. The learned Trial Judge erred in granting the Receiving Order in all the circumstances;

13. Such further and other grounds as may appear from the transcript of the evidence and as Counsel may advise and the Court permit.

Chief Justice of the Trial Division be set aside.

DATED at St. John's this 17th day of March, A.D., 1976.

CURTIS, DAWE, FAGAN, RUSSELL,
BONNELL & WINSOR.
Solicitors for the Appellant.

ADDRESS FOR SERVICE
Suite 1101,
Royal Trust Building,
Water Street,
St. John's, Newfoundland.

TO: Messrs. Chalker, Green & Rowe,
Barristers and Solicitors,
5th Floor,
Royal Trust Building,
Water Street,
St. John's, Newfoundland.
Solicitors for the Petitioner.

EXHIBIT F

1976 No. 337

THE SUPREME COURT OF THE PROVINCE OF NEWFOUNDLAND

COURT OF APPEAL

317

IN THE MATTER OF

The Bankruptcy Act
Chap. B-3, R.S.C. 1970

AND IN THE MATTER OF

Provincial Refining
Company Limited

NOTICE OF APPEAL AND APPLICATION FOR LEAVE TO APPEAL

TAKE NOTICE that Provincial Refining Company Limited appeals from the Order of The Honourable Chief Justice of the Trial Division herein made on the 12th. day of March, A.D., 1976, granting a Receiving Order against Provincial Refining Company Limited and if leave is necessary applies for leave to appeal from the said Order and that the Court will be moved on Tuesday, the 6th. day of April, A.D., 1976 at 10:30 o'clock in the forenoon or so soon thereafter as Counsel can be heard by Aubrey I. Bonnell of Counsel for Provincial Refining Company Limited for a day to be set for the hearing of the within Appeal and that the grounds for the Appeal are that the said Order is contrary to the evidence, the weight of the evidence and the law, particulars of which are as follows:

1. The learned Trial Judge erred in failing to hold that upon filing a proposal to creditors by the Debtor all proceedings including the Petition before him were stayed;

2. The learned Trial Judge erred in holding that Section 49 (1) of the Bankruptcy Act, Chapter B-3, R.S.C. 1970, had no application to proceedings by way of Petition for a Receiving Order;

The United States Judge erred in granting [illegible]

when he had lost jurisdiction by reason of the filing

of the aforesaid proposal;

4. The learned Trial Judge erred by arriving at the decision referred to in Ground 2 herein without hearing argument;

5. The learned Trial Judge erred in failing to impose a stay pursuant to the provisions of Section 25(10) pending resolution of a dispute as to the effect of certain agency agreements dated September 20, 1973, and other agreements between the parties;

6. The learned Trial Judge erred in holding that the aforesaid agreements were merely agreements to make an agreement;

7. The learned Trial Judge erred in granting the Receiving Order in the face of the aforesaid agreements;

8. The learned Trial Judge erred in failing to hold that the petitioning creditor was using the Petition to obtain a collateral advantage or for an improper purpose;

9. The learned Trial Judge erred in rejecting material evidence on the aforesaid issue;

10. The learned Trial Judge erred in holding that the Petitioner had established the existence of a debt exceeding $1000.00 and that the Debtor had committed an act of bankruptcy in the 6 months immediately preceding the filing of the Petition;

11. The learned Trial Judge erred in relying upon the filing of the proposal as evidence of an act of bankruptcy;

12. The learned Trial Judge erred in granting the Receiving Order in all the circumstances;

13. Such further and other grounds as may appear from the transcript of the evidence and as Counsel may advise and

the Court permit.

AND take notice that the Appellant asks that the Order of the Chief Justice of the Trial Division be set aside.

DATED at St. John's this 17th day of March, A.D., 1976.

CURTIS, DAWE, FAGAN, RUSSELL,
BONNELL & WINSOR.
Solicitors for the Appellant.

ADDRESS FOR SERVICE
Suite 1101,
Royal Trust Building,
Water Street,
St. John's, Newfoundland.

TO: Messrs. Chalker, Green & Rowe,
Barristers and Solicitors,
5th Floor,
Royal Trust Building,
Water Street,
St. John's, Newfoundland.
Solicitors for the Petitioner.

EXHIBIT G

1976 No. 338

IN THE SUPREME COURT OF NEWFOUNDLAND

TRIAL DIVISION

IN BANKRUPTCY

IN THE MATTER OF

The Bankruptcy Act
Chap. B-3, R.S.C. 1970

AND IN THE MATTER OF

Newfoundland Refining
Company Limited

O R D E R

UPON Motion of Newfoundland Refining Company Limited, AND UPON HEARING Aubrey Bonnell, of Counsel for said Newfoundland Refining Company Limited, AND UPON HEARING John Green, of Counsel for Atlantic Trading (Delaware) Corporation AND UPON READING the Affidavit filed by Aubrey Bonnell IT IS ORDERED THAT the request for a stay of the operations and execution of the Receiving Order granted herein be and is hereby denied.

DATED at St. John's, this 29th day of March, A.D. 1976.

By the Court.

Registrar in Bankruptcy

EXHIBIT H

1976 No. 337

IN THE SUPREME COURT OF NEWFOUNDLAND

TRIAL DIVISION

IN BANKRUPTCY

IN THE MATTER OF

The Bankruptcy Act
Chap. B-3, R.S.C. 1970

AND IN THE MATTER OF

Provincial Refining
Company Limited

ORDER

UPON Motion of Provincial Refining Company Limited, AND UPON HEARING Aubrey Bonnell, of Counsel for said Provincial Refining Company Limited, AND UPON HEARING John Green, of Counsel for Atlantic Trading (Delaware) Corporation AND UPON READING the Affidavit filed by Aubrey Bonnell IT IS ORDERED THAT the request for a stay of the operations and execution of the Receiving Order granted herein be and is hereby denied.

DATED at St. John's, this 29th day of March, A.D. 1976.

"By the Court!"

Registrar in Bankruptcy

EXHIBIT I

323

C 199-S Summons without Notice, Supreme Court, Inch. Personal service

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80 EXCHANGE PL. AT BROADWAY, N.Y.C. 10004

Supreme Court of the State of New York

County of NEW YORK

Index No. 03959/76

SNR HOLDINGS, INC. as sole stockholder of NEWFOUNDLAND REFINING COMPANY LIMITED and PROVINCIAL REFINING COMPANY LIMITED,

Plaintiffs

against

ATAKA AMERICA, INC., ATAKA & CO., LTD., ATLANTIC TRADING (DELAWARE) CORP., and THE SUMITOMO BANK, LTD.,

Defendants

Plaintiff's designation: New York County as the place of trial

The basis of the venue is Residence of Defendants

Summons

Plaintiff resides at St. John's, Newfoundland

To the above named Defendant

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated, March 4, 1976

Manning, Carey & Redmond
Attorney(s) for Plaintiffs

Defendant's address:
Ataka America, Inc. - 633 Third Ave., N.Y., N.Y.
Ataka & Co., Ltd. - 633 Third Ave., N.Y., N.Y.
Atlantic Trading (Del.) Corp. - 633 Third Ave., N.Y., N.Y.
The Sumitomo Bank, Ltd. - One World Trade Center, N.Y., N.Y.

Post Office Address
122 East 42nd Street
New York, New York 10017
(212) 867-1040

Exhibit I

SUPREME COURT, STATE OF
NEW YORK, COUNTY OF NEW YORK

----------X

SNR HOLDINGS, INC. as sole stockholder of NEWFOUNDLAND REFINING COMPANY LIMITED and PROVINCIAL REFINING COMPANY LIMITED,

Plaintiffs, :

-against- VERIFIED COMPLAINT

ATAKA AMERICA, INC., ATAKA & CO., LTD., ATLANTIC TRADING (DELAWARE) CORP., and THE SUMITOMO BANK, LTD., : 76 CIV

Defendants.

----------X

Plaintiffs, through their attorneys, Manning, Carey & Redmond, complaining of the defendants herein, allege as follows:

1. This action is brought under BCL §626 by SNR Holdings, Inc. ("SNR"), a Delaware corporation, presently the sole stockholder of defendant Newfoundland Refining Company Limited ("NRC") and, through a wholly owned subsidiary, Provincial Holding Company, Ltd., a Newfoundland Corporation, is and was at all relevant times herein the sole stockholder of Provincial Refining Company Limited ("PRC"). This action is brought by plaintiffs because of the existence

of an ex parte restraining order of the Supreme Court of Newfoundland enjoining the bringing of such action based upon the Application of defendant Atlantic Trading (Delaware) Corp. in violation of a forum selection clause binding the parties to hear all disputes in the Courts of New York (see par. herein).

2. Plaintiff NRC is a Newfoundland, Canada, corporation, with its principal office in St. John's, Newfoundland.

3. PRC is a Newfoundland, Canada, corporation, with its principal office in St. John's Newfoundland.

4. Defendant Ataka America, Inc. is, on information and belief, a New York corporation, with its principal place of business in New York City, New York; at all relevant times herein, said defendant was the alter ego and agent of defendant Ataka & Co., Ltd., and both acted as one entity.

5. On Information and belief, defendant Ataka & Co., Ltd., is a Japanese corporation, which has been in business in New York City since 1956 (defendants Ataka America, Inc. and Ataka & Co., Ltd. will be referred to herein, collectively, as "Ataka").

6. On information and belief, defendant Atlantic Trading (Delaware) Corporation is a Delaware corporation, with a principal office in New York City; which purports to be an assignee of all assets and liabilities arising out of the dealings between Ataka and plaintiffs', references to Ataka shall include said defendant after it became Ataka's assignee, which purportedly occurred on February 6, 1976.

7. On information and belief, defendant The Sumitomo Bank, Ltd. ("Sumitomo Bank") is a banking corporation, incorporated under the laws of Japan, with an agency in New York City.

8. Plaintiff PRC owns an oil refinery at Come-By-Chance, Newfoundland, Canada, which refinery, by contractual agreement was supplied crude oil by NRC at its cost.

9. At all relevant times herein, defendants Ataka conducted a world-wide trading operation, engaged in all phases of international purchasing and sale of raw materials of all types and otherwise engaged in all forms of international commerce.

10. In 1972, when it appeared that there was insufficient financing available to complete the refinery, Ataka agreed to provide $15,000,000 for such purposes to be secured by a first mortgage. Ataka was at that time acting as a broker

between NRC and Sanko Steamship Company ("Sanko") for a long term charter of one VLCC vessel and a short term contract of affreightment. As part of the added financing, Ataka required that these arrangements be cancelled and that NRC enter into three VLCC charter parties with Sanko, on which Ataka would act as broker at a fee of $250,000 per year. Ataka performed substantially no services for such fee.

11. By an "Agency Agreement", dated September 20, 1973, between plaintiff NRC and defendants Ataka.(Exhibit A hereto):

(a) Ataka was appointed by NRC "as its exclusive purchase and sales agent for ALL THE CRUDE OIL contracted by NRC with its suppliers to sell to Provincial Refining (plaintiff PRC)..."; and Ataka agreed to purchase all crude oil contracted for by NRC in accordance with the terms of the BP Trading contract including the furnishing of Letters of Credit required under the said BP Trading contract, for which Ataka was to be paid a commission on all such purchases.

(b) Ataka was to make payment for all crude oil supplied to NRC, with NRC being responsible to Ataka for all of such payments in the manner hereinafter described;

(c) All sales of crude oil by NRC to PRC and receipts of payments therefor were to be executed by Ataka for and on behalf of NRC, with such funds being used by Ataka to pay

the supplier of such crude oil;

(d) Ataka "as agent of NRC" agreed to extend to NRC credit facilities of Ataka [Ataka] for any advance to be made to NRC's crude oil supplier for the crude oil to be supplied to PRC. The agreement also provided that it was Ataka's intention "to enable NRC to overcome start-up difficulties in the initial start-up stage until the refining operation has reached the normal scheduled production stage." For advances made by Ataka to NRC's crude oil supplier, NRC agreed to issue promissory notes to Ataka "according to the repayment terms and conditions to be agreed...";

(e) The parties agreed that such agreement would continue in effect for at least ten years or until all indebtedness of NRC to Ataka had been repaid, whichever was longer.

12. The Agency Agreement contained the following provision:

> "This agreement shall be construed in accordance with the laws of the State of New York and any dispute arising between the parties shall be submitted for determination by a New York Court." (Emphasis added.)

13. By separate Supplementary Agreement, dated September 20, 1973, Ataka agreed to a loan of $42,000,000 to NRC; such loan was to be represented by NRC's unsecured promissory notes maturing June 30, 1985.

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14. Following execution of the Agency Agreement and the Supplementary Agreement on September 20, 1973, the Israeli-Arab war erupted in October 1973 and was followed by the Arab oil embargo on October 16th. From October 1, 1973 to April 1, 1974, by reason of the concerted actions of the OPEC countries, the world price of crude oil increased phenomenally. The contract price of the crude oil purchased by NRC increased during such period from $2.293 per barrel on October 1, 1973, to $10.80 per barrel on November 1, 1974, and then to $11.77 on October 1, 1975. This, of course, necessitated a similar increase in the credit to be supplied by Ataka for the purchase of the crude oil required by NRC. These increases in crude oil price increased the credit required for 100,000 barrels per day for 150 days (the credit allowed on the crude oil) from the $34,000,000 contemplated in September 1973, to $162,000,000 by November 1, 1974. When there are added the $42,000,000 advance of Ataka to NRC and the $15,000,000 first mortgage loan, the present agreed level of financing reached $219,000,000. When the operating difficulties and product price reductions mentioned in the following paragraphs #19 and #20 were experienced by the refinery, Ataka "rolled over", i.e., extende

for one year certain of the Bills of Exchange which had been issued by the crude oil supplier pursuant to the Ataka Letters of Credit with an understanding that additional extensions would be granted if needed.

15. In the Agency Agreement Ataka recognized and agreed that the sole source of funds from which the Ataka credits were to be and could be paid was a specific bank account of NRC to be administered by Ataka as follows (Art. II):

> "c) Title shall vest to NRC when the crude oil passes the flange connecting Supplier's pipeline or delivery hose with the vessel's intake pipe, at which point supplier's responsibility shall cease, and NRC shall assume all risk of loss and damage until passage of title to Provincial Refining which be at the ship's flange at the wharf at Come-By-Chance.
>
> d) Payment to BPT and/or any other supplier shall be made by ATAKA out of the account referred to in e) below as agent only and NRC shall be solely responsible to ATAKA to refund any advances or payments made including all charges and expenses, legal fees, stamp duties and taxes of all nature incurred by ATAKA during the course of executing the terms and conditions of the crude oil contract.
>
> e) All sales to Provincial Refining and the receipt of payments according to the sales contract by and between NRC and Provincial Refining shall be executed by ATAKA for and on behalf of NRC. All sums so received by ATAKA shall be kept in an account with a prime bank or banks in New York designated by ATAKA to be used solely for the payments to BPT and or any other supplier."

16. By reason of the foregoing described arrangement Ataka was the sole supplier of the crude oil to the refinery and Ataka was to effectuate the sale of such crude oil from NRC to PRC, at the F.O.B. cost thereof; when PRC made payment for such crude oil to NRC the funds were to be paid into the bank account referred to in Article II(e) of the Agency Agreement and were to be the source, and the only source, specified in the Agency Agreement, of payments to BP Trading for crude oil. Thus, the Agency Agreement makes clear that it was the credit of PRC that Ataka was relying upon for payment to it for crude oil purchased and not the credit of NRC. The $42,000,000 advanced to NRC by Ataka against the NRC promissory notes due June 30, 1985, obviously was to be paid from some other source as NRC did not, at that time, have any source of funds other than the funds placed in the Article II(e) bank account administered by Ataka.

17. In early 1974 Ataka and PRC made PRC a direct party to the Agency Agreement by directing the bills of exchange issued under the letters of credit to PRC for acceptance and thus making PRC primarily liable to Ataka rather than being indirectly liable through NRC as originally provided in the Agency Agreement.

18. The arrangements for the payment of funds advanced by Ataka to NRC, i.e., solely from payments by PRC, which in turn, could derive revenues only from the sale of products refined from such crude, followed established financing arrangements between Ataka and Shaheen Natural Resources Company, Inc. ("SNR"), the parent company of NRC and PRC. Starting in 1972 and continuing into 1975, Ataka and SNR engaged in a series of negotiations in connection with many new ventures to be financed by Ataka. From these negotiations, there resulted documented proposals, many of which were executed, and many others of which were agreed to in principle with documents being drafted, which, in the aggregate, committed Ataka to finance in excess of two billion dollars of business ventures with SNR or its subsidiaries, all of which contemplated payment to Ataka solely from the earnings of the particular venture involved. The major ventures which Ataka undertook to finance for SNR were:

(i) The purchase by SNR of 45,000 barrels per day of Malaysian and Arabian crude oil; the one year's credit to be provided by Ataka amounts to approximately $200,000,000; this agreement was executed, and partially performed by Ataka;

(ii) The participation in the development, exploration or purchase of crude oil reserves and crude oil in Alaska,

the Far East, SNR's interest in the Canadian Athabasca oil sands, and the North Sea; all of these ventures involved a estimated total commitment by Ataka of at least $100,000,000; this agreement was executed.

(iii) The purchase of crude oil for the 200,000 barrels per day expansion of the Come-By-Chance refinery, which would have required credit of $400,000,000; a telex agreement was made.

(iv) The acquisition of the iron ore deposits at Julian Lake Labrador by a Canadian company to be owned 49% by Ataka and 51% by SNR, and to finance the plant and equipment necessary for the mining and pelletizing of the ore; in addition to financing the project, Ataka undertook to sell the pelletized ore; according to Ataka's studies, the overall project involved an investment of $566,000,000; not only was this project the subject of a written agreement between Ataka and SNR but also was the subject of favorable negotiations between the Newfoundland Government and Ataka; the project has been delayed due to litigation in Newfoundland.

(v) A loan by SNR to Pertamina, the State owned oil company of Indonesia, and Letters of Credit for the purchase by SNR of 100,000 barrels per day of crude oil from Pertamina, which would have required approximately $415,000,000; following the agreement between SNR and Ataka, SNR proceeded to execute, with Ataka consent, a contract with Pertamina based on Ataka's undertaking to provide the financing.

(vi) The purchase of 200,000 barrels per day of crude oil for the Nova Scotia Chemical refinery now under development, the credit for which would amount to $180,000,000, plus a loan by Ataka to SNR of $80,000,000. In addition, SNR agreed to sell all crude oil in excess of the two refinery's requirements through Ataka. An agreement in principal was reached and the agreement drafted.

(vii) A jointly owned Liberian company (50% each) to take over two or three Very Large Crude Carriers; Ataka's 50% commitment was $15,000,000; agreement in principle was reached and the agreement drafted; the corporation "Ataka Shaheen Navigation Company Ltd." was chartered by SNR at Ataka's request.

19. The PRC refinery was partially completed in December, 1973, in substantial breach of the contractual commitment of the construction contractor to complete it early in 1973; many portions of the plant were not completed. Attempted start-up disclosed many design and construction errors which have prevented completion and acceptance up to the present time. Plaintiffs have instituted a civil action in the Supreme Court of New York County for $189,000,000 in damages against UOP, Inc., the company which designed most of the refinery, and its wholly-owned subsidiaries, Procon, Inc. and Procon (Great Britain) Ltd. which constructed the refinery

20. During early 1974, the partially completed PRC refinery produced a profit because the refined product prices had been pushed to unprecedented levels above the very high prices of crude oil, largely because of the oil shortage caused by the Arab oil embargo. About the middle of 1974, the refined product prices began to decline to a level which caused the refinery to operate at a loss. Such loss was due to the design and construction errors committed by the construction contractor, the result of which was that the refinery was incapable of producing the lighter, more valuable, refined products. Had the refinery been capable of producing such lighter, more valuable, refined products, most, if not all, of the operating losses would have been avoided. The net loss during 1974 (including a first quarter profit of $8,500,000) was $58,000,000, which losses and the reasons therefore were currently made known to Ataka.

21. Early in 1974, Ataka at its request became

(a) exclusive bunker supply agent for all of NRC's ships in the Persian Gulf, the loading port for NRC's crude oil; in most instances, the price charged NRC by Ataka was substantially in excess of prevailing market prices, and

(b) a purchaser from the refinery of approximately one million barrels of naphtha, having a value of $15,000,000, wich Ataka urgently needed to exchange for chemical products

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it required; this product supplied early in 1974, in the midst of the Arab oil embargo; and

(c) the supplier to the refinery of $1,000,000 of platinum catalyst required for the refinery's reforming unit.

22. On January 18, 1974, in a premature effort to invoke the provisions of Article III(a) of the Agency Agreement under which PRC was obligated to increase its $3,000,000 Letter of Credit after 18 months to an amount "equal to the average of the cost of the shipments of the last three (3) months", Ataka suggested that the said Letter of Credit be increased to a higher level required because of the increased cost of crude oil. M. Takagi, Managing Director of Ataka, "guaranteed" that the Letter would "not be used and in case of need I will work out with you some other method of refinancing should instances occur." Nothing more was done and the matter was dropped until August 1975 when Ataka suggested an increase in the Letter of Credit to approximately $22,500,000. After some discussion the matter was dropped.

23. On October 16, 1974, the first Bill of Exchange which PRC did not have funds to pay became due; in accordance with the understood payment procedure, Ataka caused such Bill of Exchange, which was in the amount of $15,400,000, to

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be "rolled over" to December 15, 1974. Ataka paid that Bill of Exchange on the due date and PRC reimbursed Ataka on December 16th and 17th; thereafter, on 19 separate occasions Bills of Exchange were "rolled over" or "re-rolled over" to conform to the ability of PRC to pay such Bills of Exchange.

24. In February 1975, Ataka began efforts to have its then unsecured claims against NRC and PRC secured by a third mortgage on the refinery, on the representation that such a third mortgage was being required by Ataka's banks. The Agency Agreement makes no provision for such third mortgage. As the issuance of the third mortgage required the consent of the holders of the first and second mortgages, NRC and PRC undertook to endeavor to obtain such consents.

25. While negotiations were in progress with respect to a third mortgage security for Ataka's claim, the First National Bank of Chicago ("Chicago Bank"), a creditor of PRC in the amount of approximately $28,000,000, of which $20,000,000 was secured by a debenture with a lien on the crude oil and product inventory of PRC caused a Receiver to be appointed by the Newfoundland courts on October 24, 1975, on the basis of a default in payment which was then due.

26. Ataka then caused meetings to be held among Ataka, UOP, Inc. (which, as indicated in paragraph 18 hereof, designed a large part of the refinery and the parent company of the contractor which constructed the refinery), NRC, PRC

and certain affiliated interests. As a result of such meetings an agreement dated October 28, 1975, was executed among said parties providing, inter alia,

(a) the effective date of said agreement was to be when the holders of the first and second mortgages granted their consent to the issuance of a third mortgage;

(b) immediately upon execution of the agreement a number of steps were to be taken for Ataka and UOP to take over effective control of the management of NRC, PRC and certain of their affiliates;

(c) Ataka and UOP would undertake through financial support (without any obligation to supply additional funds) and otherwise, including management of the operations, use their best efforts to continue the operations of PRC with the right to terminate such support in the event they decide they are unable to continue such operations on a profitable basis."

27. UOP failed to take any action with respect to the October 28, 1975 Agreement; in spite of the fact that certain parts of the Agreement were not performed, the financial and accounting management of NRC and PRC were isolated and placed under the control of Ataka in accordance with the said Agreement. Office space was provided Ataka and its accountants and all financial decisions and receipts and payments of all types were placed under their absolute

control and discretion. From that time forward until February 14, 1976, the affairs of NRC and PRC remained under the control of Ataka, which was then under control of Sumitomo Bank.

28. Following the assumption of control of the affairs of NRC and PRC, Ataka

(a) on November 8, 1975, paid the then remaining $18,000,000 owed to the Chicago Bank by PRC (said amount having been reduced by $10,000,000 from proceeds of accounts receivable seized by the Chicago Bank); Ataka requested as part of the transaction a demand debenture of PRC ("First Debenture") secured by a lien on PRC's crude oil and refined product inventory. It was understood by PRC and NRC that this note would remain outstanding as were the Bills of Exchange.

(b) "Rolled over" a Bill of Exchange for $18,700,000, due on November 11, 1975, to November 9, 1976, for one year, and Bills of Exchange for $11,200,000 and $9,700,000 due, respectively, on November 26th and 29th, 1975, to January 26th and 30th, 1976, based upon Ataka's decision as to the then projected cash flow of PRC which showed that two Bills of Exchange could be paid on those dates, without interference with the normal conduct of PRC's business.

(c) for the first time, altered the procedure for payment for crude oil, as is more fully described in paragraph 31 hereof; Ataka advanced $25,000,000 to PRC on December 15,

1975, which Ataka then took back to pay itself for a cargo of crude delivered to PRC; Ataka required another debenture ("Second Debenture"), secured as described in subparagraph (a) above and due February 15, 1976; it was understood by NRC and PRC that these maturities would be "rolled over" as were the Bills of Exchange, to coincide with PRC's cash flow.

(d) on December 23, 1975, drew against the $3,000,000 Letter of Credit which had been outstanding and untouched since September 13, 1973.

(e) in accordance with the newly instituted procedure, advanced $6,320,000 to PRC on January 30, 1976, which was used for a similar purpose as described in (b) above, with the issuance of a third debenture ("Third Debenture") due May 1, 1976; it was similarly understood by NRC and PRC that these maturities would be "rolled over" as were the Bills of Exchange.

29. On or about November 15, 1975, defendant Sumitomo Bank, Ataka's principal Japanese bank, began to exert its influence in the conduct of the relations between Ataka, NRC and PRC; shortly thereafter, on or about December 15, 1975, the New York investment banking firm Morgan Stanley & Co. ("Morgan Stanley"), was retained, either by Sumitomo Bank

acting on behalf of Ataka, or directly by Sumitomo Bank, to give advice on the future conduct of the relationships between Ataka, PRC, NRC and, apparently, on the relationships with the other SNR companies.

30. On information and belief, the handling of all of Ataka's relationships with NRC, PRC and the other SNR Companies was placed under the control of Morgan Stanley on or about December 15, 1975. Within days of the retention of Morgan Stanley the cordial and cooperative relationships between Ataka and the SNR Companies terminated.

31. As indicated in paragraph 29, above, Ataka on December 15, 1975, for the first time, changed the payment procedures set forth in the Agency Agreement which had been followed for two years and involved credit advances by Ataka to NRC and PRC of more than $490,000,000 in 1974 and 1975. Ataka required the issuance of the Second and Third Debentures. It was this change in the payment procedure, coupled with subsequent actions by Ataka and Sumitomo Bank in connection with the Second Debenture, which constituted a substantial breach in the Agency Agreement and the perpetration of unlawful conversion of the funds of PRC and NRC by Ataka and Sumitomo Bank. The nature of the breach of contract and unlawful conversions by Ataka and Sumitomo Bank was accomplished as follows:

(a) Under the Agency Agreement, prior to the breach thereof, crude oil was purchased by NRC and PRC under Letters of Credit furnished by Ataka; Bills of Lading were issued by the crude oil supplier together with Bills of Exchange for the amount due on the crude oil, payable on the specified payment date; the Bills of Exchange were presented for acceptance by Ataka's bank. The accepted Bills of Exchange were then held by the crude supplier and presented for payment on the due date. Payment was made of such Bills of Exchange by PRC from the net funds derived from the sale of refined products; in the absence of sufficient funds, Ataka caused such Bills of Exchange to be "rolled over" until funds became available.

(b) In contrast, the procedure followed in connection with the December 15, 1975 and January 30, 1976 deliveries, was that the crude oil was purchased by PRC from the crude supplier under the said Letters of Credit supplied by Ataka; Ataka had previously caused NRC to instruct the crude oil supplier to issue the Bills of Lading in Ataka's name, rather than in the name of NRC or PRC; the Bills of Exchange were presented by the crude supplier to Ataka's banks for acceptance as had been previously done; after the crude oil arrived at the refinery, Ataka refused to permit it to be delivered to PRC until issuance of the Second Debenture; the tanker remained anchored off the refinery jetty for 33 days

(at an added cost of approximately $660,000) pending negotiations over the issuance of the Second Debenture. As PRC was facing imminent shutdown of the refinery for lack of crude oil, PRC agreed to issue to Ataka said Second Debenture. NRC and PRC understood that the Second Debenture would be refinanced on the same basis as the Bills of Exchange had been previously "rolled over".

32. The actual procedures required by Ataka in the issuance of the Second Debenture by PRC were as follows:

(a) The crude oil, having a value of $24,446,850 was delivered to PRC; simultaneously Ataka made a loan of $25,000,000 to PRC against issuance of the Second Debenture; the cash proceeds from the loan were then applied by Ataka as a payment to itself for the crude oil so delivered, with the difference of $553,150 being "credited" to other amounts owed to Ataka.

(b) As PRC sold refined products produced from the crude oil, the proceeds were required by Sumitomo Bank (then directing the management of NRC and PRC) to be deposited in PRC's account in the Sumitomo Bank. Ataka and Sumitomo would then inform PRC as to the disposition of such funds in the Sumitomo Bank account on the basis that certain, but not all, of the current expenses of PRC could be paid on the specific condition that substantially greater amounts would

be paid to Ataka in reduction of the Second Debenture (prior to its maturity date). Again, on January 30, 1976, Ataka apparently on the advice of Sumitomo Bank and Morgan Stanley, refused to permit the discharge of a cargo of crude oil at the refinery and after some negotiations and issuance of another debenture in a form similar to that described in the preceding paragraph, advanced $6,300,000 to PRC against the discharge of approximately one-third of the cargo; subsequently, after prolonged unsuccessful negotiations to obtain discharge of the remaining crude oil the vessel departed with the remainder of its cargo aboard.

34. Between December 29, 1975 and February 10, 1976, Ataka and Sumitomo Bank by the above described procedures, unlawfully converted to their own use $18,700,000 of PRC's operating funds.

35. Thereafter, on February 13, 1976, the day Ataka moved for the appointment of the Receiver by the Newfoundland Court by alleging the insolvency of NRC and PRC, as is more fully described in paragraphs 40 and 41, the Sumitomo Bank, without prior notice to PRC of any claimed amount due Sumitomo Bank unlawfully converted to its own use, $2,637,929 of PRC's funds, claiming a right of "set off". Thereafter, on

February 26, 1976, a customer paid $905,739 into PRC's Sumitomo Bank account, following previous instructions given by PRC, and Sumitomo Bank immediately and unlawfully converted said amount to its own use, again claiming a "set off."

36. In the latter part of December 1975, Morgan Stanley retained or caused to be retained the Houston based engineering firm of Pace Engineering Company ("Pace") purportedly to advise them on the technical aspects of the refinery. Pace sent a group of engineers to the refinery purportedly for such purpose; the engineers spent one and one-half days at the refinery and conducted their examination in sub-freezing temperatures which severely restricted outdoor work and observation. Thereafter, Pace rendered a report, supposedly dealing with the condition of the refinery and, after advising NRC and PRC of the issuance of such report, Morgan Stanley and Pace refused to permit NRC or PRC to examine a copy of said report; Ataka denied having received a copy of said report.

37. Throughout the period 1974 and 1975, the refinery technical staff was constantly making and updating various plans for correcting the engineering and construction deficiencies resulting from the breaches of the construction contract by UOP and its subsidiaries Procon and Procon (Great Britain) Ltd. By September of 1975 the refinery technical staff had concluded that certain corrections in the design and alterations

of the mechanical equipment in the refinery would permit operations at a point where the refinery could produce the design yield of refined products.

38. After the said technical studies had been completed and cost estimates for the various required corrections were made, they were turned over to the PRC and NRC financial management which began the preparation of economic feasibility studies on the basis of the then projected product yields after completion of the alterations and repairs. These studies showed that even at the depressed level of refined product prices prevailing in the fall of 1975, the refinery, after corrections, would produce a substantial profit before debt service.

39. In January 1976, Morgan Stanley, purportedly acting for Ataka and Sumitomo Bank in their relations with NRC and PRC, asserted that Morgan Stanley "had no forward plan" for the operation of the refinery on a profitable basis. The NRC and PRC financial management then extracted information from existing studies, and prepared a formal presentation based upon the refinery as it presently existed plus completion of the visbreaking unit, anticipated for April 1976, and delivered a copy of such study on February 3, 1976 to Ataka and Morgan Stanley. This report showed that on the basis stated the refinery was capable of operating at a level which would produce a profit before debt service of $8,300,000 per year,

and that with a price increase of 2.5¢ per gallon (a substantial part of which has since been realized) the refinery would produce a profit before debt service of $41,000,000 per year.

40. In apparent disregard of the forecasts supplied by NRC and PRC and in apparent reliance upon the cursory examination of Pace, Morgan Stanley acting for Sumitomo Bank and Ataka and pursuant to a definite plan entitled "Project Winnet" caused Ataka, in violation of the Agency Agreement, to claim defaults on the First, Second and Third Debentures and on the basis of such alleged defaults Ataka, on February 13, 1976, (a) appointed Receivers of the inventory purportedly under liens securing the said Three Debentures; (b) requested and obtained the appointment of Receivers of all the assets of NRC and PRC by the Supreme Court of Newfoundland.

41. In the documents filed with the Newfoundland Court in support of its application for the appointment of an Receivers, Ataka made many false and fraudent allegations, and failed to make material disclosures; had such false and fraudulent statements not been made and had the material omissions been disclosed, no legal grounds for the appointment of the Receivers would have existed. Ataka also failed to disclose to the Newfoundland Court that (a) the reason why NRC and PRC were not meeting their current obligations to

other creditors was that, between November 15, 1975, and February 13, 1976, Ataka and Sumitomo Bank had unlawfully converted $21,238,926 of the funds of NRC and PRC for their own use, and (b) the existence of the New York "forum selection" clause in the Agency Agreement.

FIRST CLAIM FOR RELIEF

42. Plaintiff repeats and realleges paragraphs 1 through 41 in their entirety with the same force and effect as if they were herein repeated in fully.

43. Ataka substantially breached the Agency Agreement in that it

(a) forced PRC to issue the Second Debenture, dated December 15, 1975, and the Third Debenture, dated January 30, 1976;

(b) wrongfully converted the amount of $18,700,000 of the operating funds of PRC and NRC;

(c) terminated the arrangements for the financing of the purchases of crude oil necessary for the operation of the refinery for which Ataka was the "sole agent" and thus forced the shutdown of said refinery;

(d) invoked the jurisdiction of the Courts of Newfoundland because of the falsely alleged bankruptcy of NRC and PRC, all in violation of the designation of the New York

Courts as the proper forum for determination of disputes under the Agency Agreement

all causing irreparable injury and damage to PRC and NRC.

SECOND CLAIM FOR RELIEF

44. Plaintiff repeats and alleges paragraphs 1 through 41 in their entirety with the same force and effect as if they were herein repeated in full.

45. Ataka wrongfully invoked the jurisdiction of the Supreme Court of Newfoundland and caused the appointment of a Receiver of NRC and PRC based upon false and fraudulent representations to the said Court, causing irreparable injury and damage to NRC and PRC.

THIRD CLAIM FOR RELIEF

46. Plaintiff repeats and alleges paragraphs 1 through 41 in their entirety with the same force and effect as if they were herein repeated in full.

47. Ataka, by its wrongful invocation of the jurisdiction of the Newfoundland Court and resultant appointment of Receivers of NRC and PRC's assets, caused a default to be declared by certain holders of the First and Second Mortgage on the refinery, which in turn, resulted in those creditors appointing Receivers of the refinery, which have expressed an immediate intention of shutting down the refinery and discharging all operating personnel, all causing irreparable and damage to NRC and PRC.

FOURTH CLAIM FOR RELIEF

48. Plaintiff repeats and alleges paragraphs 1 through 41 in their entirety with the same force and effect as if they were herein repeated in full.

49. Defendant Sumitomo Bank wrongfully converted to its own use $3,643,666 of the funds of NRC and PRC, all causing irreparable injury and damage to NRC and PRC.

WHEREFORE: Plaintiffs demand judgment

(a) against defendants Ataka American, Inc., Ataka & Co., Ltd. and Atlantic Trading (Delaware) Corp:

(i) ordering restitution forthwith to plaintiffs from defendants, jointly and severally, of the $18,700,000 of plaintiffs' funds wrongfully converted to the use of said defendants, together with interest thereon,

(ii) permanently enjoining the said defendants, their agents, attorneys and employees, from continuing the appointment of the Receivers of the inventory of PRC purportedly appointed under the First, Second and Third Debentures, or taking any further actions in derrogation of PRC's ownership of such inventory,

(iii) permanently enjoining said defendants, their agents, attorneys and employees, from taking further action or otherwise participating in the proceedings pending in the Supreme Court of the Province of Newfoundland, entitled "In

the Matter of the Bankruptcy Act Chap. B-3, R.S.C. 1970 and In the Matter of Provincial Refining Company Limited", Docket No. 1976 No. 337 and "In the Matter of the Bankruptcy Act Chap. B-3, R.S.C. 1970 and In the Matter of Newfoundland Refining Company Limited," Docket No. 1976 No. 338,

(iv) awarding plaintiffs damages against defendants, jointly and severally, in the amount of $10,000,000, or such higher amount as plaintiffs may have suffered by reasons of the actions of defendants; and

(v) awarding plaintiffs costs of this action, attorneys fees and such other and further relief as may be just and proper in the premises.

(b) against defendant Sumitomo Bank, Ltd.

(i) ordering restitution forthwith to plaintiffs of the $3,643,666 of plaintiffs funds wrongfully converted to the use of said defendant,

(ii) awarding plaintiffs damages against defendants in the amount of $10,000,000, or such higher amount as plaintiffs may have suffered by reason of the actions of defendants, and

(iii) awarding plaintiffs costs of this action, disbursements, attorneys fees and such other and further relief as may be just and proper in the premises.

MANNING, CAREY & REDMOND
122 East 42nd Street
New York, New York 10017
(212) 867-2340

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

ROY M. FURMARK, being duly sworn, deposes and says:

Deponent is executive vice president of the plaintiff corporation in the within action; deponent has read the foregoing complaint and knows the contents thereof and the same is true to deponent's own knowledge, except as to matters therein stated to be alleged upon information and belief as to those matters deponent believes to be true. This verification is made by deponent because the plaintiff is a corporation of which deponent is an officer.

Roy M. Furmark

Sworn to before me this
4th day of March, 1976

Notary Public

AGENCY AGREEMENT

AGREEMENT made this 14 day of September, 1973, by and between NEWFOUNDLAND REFINING COMPANY LIMITED, a corporation organized and existing under the laws of Newfoundland, Canada, having its principal place of business at 85 Elizabeth Street, St. John's, Newfoundland, (hereinafter referred to as NRC) and ATAKA AMERICA, INC., a corporation organized and existing under the laws of the State of New York, United States of America, having its principal place of business at 633 Third Avenue, New York, New York, (hereinafter referred to as ACAM);

W I T N E S S E T H :

WHEREAS, NRC is the duly authorized operator of the oil refinery at Come-By-Chance, Newfoundland, (hereinafter referred to as PLANT), which is in the process of being constructed by PROVINCIAL BUILDING COMPANY LIMITED (hereinafter referred to as PROVINCIAL BUILDING) and PROVINCIAL REFINING COMPANY LIMITED (hereinafter referred to as PROVINCIAL REFINING), both having principal places of business in St. John's, Newfoundland and both being incorporated under the Companies Act, Chapter 168 of the Revised Statutes of Newfoundland as amended and having been registered at the Office of the Council Confederation Building, St. John's, Newfoundland.

WHEREAS, ACAM is engaged primarily in the business of importing and exporting all types of commodities and also acts as manufacturers agents and/or representatives, and;

WHEREAS, NRC desires to engage the services of ACAM in importing the crude oil which NRC has contracted with BP TRADING LIMITED of London (hereinafter referred to as BPT),

Exhibit I

and/or any other supplier, and;

WHEREAS, ACAM has agreed to act as an exclusive agent in the purchase of the crude oil thus contracted and pay BPT and/or any other supplier, according to contracted price and sell as agent to the Provincial Refining according to the arrangements between Provincial Refining and NRC;

NOW THEREFORE, in consideration of the foregoing recitals and covenants of the parties herein contained and other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto mutually agree as follows:

I) NRC hereby appoints ACAM as its exclusive purchase and sales agent for ALL THE CRUDE OIL contracted by NRC with its suppliers to sell to Provincial Refining on the terms and conditions hereinafter set forth, ACAM hereby accepts such appointment and shall act as an exclusive purchase and sales agent in accordance with the terms and conditions set forth.

II) Terms of Purchase and Sales:

a) All purchases by NRC and sales to Provincial Refining will be executed by ACAM in accordance with the prices and terms fixed or confirmed by and between NRC and BPT, and/or any other supplier (including the furnishing by ACAM of any required letters of credit or similar guarantees) except that Provincial Refining shall establish a stand-by credit of THREE MILLION U.S. DOLLARS (US$3,000,000) maintained unused for the life of this agreement with a bank designated by ACAM and for the benefit of ACAM under the terms of which such bank shall have the obligation to

by ACAM against a draft and a statement certifying that ACAM has not received payment against its invoices for any shipment, including any interest and costs payable to ACAM. In case ACAM is forced to draw on the stand-by credit due to the failure of Provincial Refining to pay against invoice presented by ACAM, Provincial Refining shall immediately replenish the stand-by credit amount to the original amount of THREE MILLION U.S. (US$3,000,000) and also pay ACAM for any difference between the stand-by credit amount and the invoice amount and charges due at such time.

Failure to pay ACAM for any difference between the stand-by credit amount and the invoice amount and/or to replenish the stand-by credit within ten (10 business days shall constitute a default under the Default Clause noted herein.

On the expiration of every Eighteen (18) month period after the first shipment such stand-by credit shall be increased to an amount equal to the average of the cost of the shipments of the last three (3) months.

b) All prices shall be FOB loading port or ports so designated in the crude oil contract.

c) Title shall vest to NRC when the crude oil passes the flange connecting Supplier's pipeline or delivery hose with the vessel's intake pipe, at which point supplier's responsibility shall cease, and NRC shall assume all risk of loss and damage until passage of title to Provincial Refining which be at the ship's flange at the wharf at Come-By-Chance.

d) Payments to NRC and/or any other supplier shall be made by ACAM [illegible] referred to in e) below as agent only and NRC

shall be solely responsible to ACAM to refund any advances or payments made including all charges and expenses, legal fees, stamp duties, and taxes of all nature incurred by ACAM during the course of executing the terms and conditions of the crude oil contract.

e) All sales to Provincial Refining and the receipt of payments according to the sales contract by and between NRC and Provincial Refining shall be executed by ACAM for and on behalf of NRC. All sums so received by ACAM shall be kept in an account with a prime bank or banks in New York designated by ACAM to be used solely for the payments to BPT and or any other supplier.

Further to the above, ACAM, as agent of NRC, agrees to extend to NRC credit facilities of ACAM for any advances to be made to BPT for the crude oil to be supplied to Provincial Refining subject to ACAM's discretion as to the amount and terms of advance to be made to BPT. The intention of ACAM is to enable NRC to overcome start-up difficulties in the initial start-up stage until the refining operation has reached the normal scheduled production stage. For such advances made by ACAM to BPT for NRC, NRC agrees to issue promissory notes to ACAM according to the repayment terms and conditions to be agreed. All promissory notes are to bear interest at the rate officially charged its trading departments by ACAM's management.

f) All other interest and other charges and its cost payable by NRC to ACAM shall be at the rate charged to ACAM and payable every one hundred eighty (180) days.

g) ACAM shall not be responsible for obtaining custom clearance at either loading port or discharging port.

BEST COPY AVAILABLE

b) NRC shall pay to ACAM as agency compensation the sum of Two U.S. Cents (US/2) per barrel for all crude oil loaded, payable monthly under separate invoice.

III) A photocopy of the original crude oil purchase contract by and between NRC and DPT and/or any other future supplier, shall be given to ACAM for use in checking the payments of the amount for the crude oil.

IV) ACAM agrees to keep such photocopies strictly confidential and shall not divulge the contents to any third party.

V) ACAM's reasonable counsel fees shall be reimbursed to it by NRC.

VI) The terms of this agreement shall be in force during the life of any any extension of the crude oil contract concluded by and between NRC and DPT and/or any other future supplier until the expiration of ten (10) years or until any outstanding indebtedness of NRC to ACAM shall have been repaid whichever shall be later.

VII) NRC shall establish a full insurance coverage on the shipments of crude oil and shall assign such insurance to ACAM until all obligations of NRC to ACAM has been disbursed.

VIII) As a very important part of this agreement that must be strictly adhered to so as to enable ACAM to fulfill the duties of agency, NRC agrees to give ACAM a long range, six (6) months, schedules of the vessels scheduled to load crude oil at the loading ports and also a daily schedule of any changes of the vessels and the ship's draft so that the crude facilities can be maintained efficiently.

IX) In the event of any breach at anytime of any of the terms,

conditions and agreements hereof except for causes deemed Force Majeure then at such time as the event occurs, all outstanding obligations shall immediately become due and payable unless otherwise agreed upon by the parties involved.

X) This agreement shall be construed in accordance with the laws of the State of New York and any dispute arising between the parties shall be submitted for determination by a New York court.

XI) This agreement supercedes all prior agreements relating to the subject matter hereof.

IN WITNESS WHEREOF the parties hereto have caused this agreement to be executed as of the day and year first above written.

NEWFOUNDLAND REFINING COMPANY LIMITED

Exec VP

ATAKA AMERICA, INC.

BLANK SHEET

BLANK SHEET

MEMORANDUM OF LAW (WHITE & CASE)

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

In Re	:	
PROVINCIAL REFINING COMPANY LIMITED	:	
and	:	
NEWFOUNDLAND REFINING COMPANY, LIMITED,	:	
Bankrupts.	:	
		76 Civ. 1373 (R.O.)
THE CLARKSON COMPANY LIMITED, as Trustee in Bankruptcy, appointed by the Supreme Court of the Province of Newfoundland, of the property of Newfoundland Refining Company Limited and Provincial Refining Company Limited,	:	
Plaintiff,	:	
-against-	:	
JOHN M. SHAHEEN, ROY M. FURMARK, ALBIN W. SMITH, PHILIP GANDERT, PETER L. CARAS, PAUL W. RISHELL, WILLIAM J. SHERIDAN and JOHN DOE,	:	
Defendants.	:	

REPLY MEMORANDUM OF THE CLARKSON COMPANY LIMITED

WHITE & CASE
Attorneys for The Clarkson Company Limited, as Trustee in Bankruptcy, for Provincial Refining Company Limited and Newfoundland Refining Company Limited
14 Wall Street
New York, New York 10005
(212) 732-1040

Of Counsel

Jeffrey A. Barist
Edna R. Sussman

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

In Re PROVINCIAL REFINING COMPANY LIMITED and NEWFOUNDLAND REFINING COMPANY, LIMITED, Bankrupts.	
THE CLARKSON COMPANY LIMITED, as Trustee in Bankruptcy, appointed by the Supreme Court of the Province of Newfoundland, of the property of Newfoundland Refining Company Limited and Provincial Refining Company Limited, Plaintiff, -against- JOHN M. SHAHEEN, ROY M. FURMARK, ALBIN W. SMITH, PHILIP GANDERT, PETER L. CARAS, PAUL W. RISHELL, WILLIAM J. SHERIDAN and JOHN DOE, Defendants.	76 Civ. 1373 (R.O.)

REPLY MEMORANDUM OF THE CLARKSON COMPANY LIMITED

Preliminary Statement

Defendants do not controvert the fact that The Clarkson Company Limited ("Clarkson") is the Trustee in Bankruptcy ap-

pointed by the Supreme Court of the Province of Newfoundland for the property of Provincial Refining Company Limited ("PRC") and Newfoundland Refining Company Limited ("NRC"). They do not allege that they are entitled to possession of the books and records of PRC and NRC or to possession of any other property of those companies. It is self-evident that defendants, the former officers and directors of PRC and NRC who ran the companies into bankruptcy, are precisely the individuals who are not entitled to continue their possession of the property of the bankrupt companies. Clarkson's right as Trustee in Bankruptcy to possession of the books and records of PRC and NRC and of other property belonging to the bankrupt companies located in New York is established.

It is similarly established that defendants' continuance of custody and control of the property of NRC and PRC is wrongful. Defendants' arguments, and their actions, are smokescreens, designed to do nothing but obscure the simple fact that the property of NRC and PRC they control belongs to the Trustee.

I

CLARKSON HAS SHOWN ITS RIGHT TO A PRELIMINARY INJUNCTION REQUIRING DEFENDANTS TO DELIVER TO CLARKSON ALL PROPERTY OF THE DEFENDANTS AND RESTRAINING DEFENDANTS FROM ANY INTERFERENCE OR DISBURSEMENT OF THE PROPERTY OF THE BANKRUPTS.

The moving papers submitted by Clarkson are essentially uncontroverted by defendants.

Clarkson submitted and established that it was the Trustee in Bankruptcy for NRC and PRC, as appointed by the Supreme Court of the Province of Newfoundland. This is not disputed by defendants.

Clarkson submitted that under Canadian law it had the obligation (similar to American law) to take control of all property of the bankrupts, with particular reference to the books and records of the bankrupts. This is not controverted by defendants.

Clarkson asserted that the books and records and other property of PRC and NRC are within the control of defendants, the former officers and directors of the bankrupts. This is not controverted by defendants.

Clarkson asserted that it, as Trustee of the estate which it represents, would surfer irreparable injury if the preliminary injunction prayed for is not issued. This is not controverted by defendants.

Perhaps even more fundamentally, defendants make no assertion that they retain possession of the books and records and other property of PRC and NRC under any color of right.

What this application then simply comes down to is the application of the rightful owner of property to require defendants with no right to the property to immediately deliver the property to the rightful owner. The case for a preliminary injunction is compelling.

II

THE POINTS RAISED BY THE DEFENDANTS ARE WITHOUT MERIT.

1. There Is No Connection Between The Action Pending In The State Court And The Relief Sought In This Court And No Stay Of This Court's Proceedings Is Proper.

Defendants assert that Clarkson's request for relief to this Court is identical to its request for relief in an action entitled SNR Holdings, Inc., et al. v. Ataka America, et al., Docket No. 03959/76, now pending in the state court (the "state court action") (defendants' memorandum pp. 2-3). The cause of action asserted by Clarkson before this Court is completely distinct from the relief Clarkson seeks in the state court action.

The state court action was instituted as a derivative action by two Shaheen companies as shareholders of PRC and NRC. The complaint seeks money allegedly owing PRC and NRC due to certain alleged breaches of contract by Ataka America and allegedly unlawful set-offs by Sumitomo Bank. Pursuant to Section 1017 of the Civil Practice Law and Rules, the doctrine set forth in Mayer v. Fleming, 327 U.S. 161 (1946) and the analogous provisions of the Canadian Law, Clarkson moved in the state court to have itself, as Trustee, substituted as the party plaintiff since title to all property of the bankrupts, including causes of action, vested in it upon its appointment as Trustee. Clarkson is obligated as Trustee to take over and control causes of action belonging to the bankrupts and to examine the claims made.

Memorandum of Law

Clarkson's request before the state court "for such other and further relief as may be necessary to preserve the assets of the estate" of PRC and NRC, which is quoted at page 3 of defendants' memorandum, is taken out of context. The relief sought by Clarkson in the state court action pertains only to the preservation of the causes of action asserted in that court insofar as they are assets of the estate which Clarkson is duty-bound to preserve. Clarkson's request for relief in the state court does not extend to any assets of the bankrupt corporations other than the causes of action there asserted and thus does not in any way touch upon the relief requested by Clarkson in this Court.

The action before this Court was instituted by Clarkson against the former officers and directors of PRC and NRC on the ground that those individuals are wrongfully withholding books and records and other property belonging to NRC and PRC from it. No such prayer for relief has been made to the state court.

The defendants are asserting that a cause of action for breach of contract and unlawful setoffs against Ataka America, Sumitomo Bank and certain other named defendants asserted in the state court somehow should lead this Court to stay the proceeding before it which pertains to a wrongful withholding of possession of property brought against the former officers and directors of PRC and NRC. There is no similarity between the two cases and no rationale for the defendants' position. The sole similar issue in

the two actions is the Shaheen group's assertion that they attack, under Canadian law, the appointment by a Canadian court of Clarkson as Trustee. That the Shaheen group has managed to raise the same frivolous objection in two otherwise unrelated proceedings does not mean that Clarkson should be deprived of its federally granted right to litigate in this Court. In the case herein, no stay of this Court's proceedings is proper.

In urging this Court to stay its proceeding defendants ignore the admonition of the Supreme Court:

> "The doctrine of abstention, under which a District Court may decline to exercise or postpone the exercise of its jurisdiction, is an extraordinary and narrow exception to the duty of a District Court to adjudicate a controversy properly before it. Abdication of the obligation to decide cases can be justified under this doctrine only in exceptional circumstances where the order to the parties to repair to the State Court would clearly serve an important countervailing interest." Allegheny County v. Mashuda Co., 360 U.S. 185, 188-9(1958).

The general rule with regard to the abstention of a federal court in diversity cases where jurisdiction was properly invoked was set forth in Allegheny County v. Mashuda Co., 360 U.S. 185, 186-187 (1958)

> "This case presents the question whether a District Court may abstain from exercising its properly invoked diversity jurisdiction in a state eminent domain case in which the exercise of that jurisdiction would not entail the possibility of a premature and perhaps unnecessary decision of a serious federal constitutional question, would not create the hazard of unsettling some delicate balance in the area of federal-state relationships and would not even require the District Court to guess at the resolution of uncertain and difficult issues of state law. We hold

> that in such circumstances a District Court cannot refuse to discharge the responsibility imposed by Congress under 28 U.S.C. §§1332 and 1441, to render prompt justice in cases where its diversity jurisdiction has been properly invoked."

A federal court may not refuse to exercise its jurisdiction to suit unsupported allegations of "convenience." In Meredith v. The City of Winter Haven, 320 U.S. 228, 234 (1943), the Supreme Court held:

> "The diversity jurisdiction was not conferred for the benefit of the federal courts or to serve their convenience. Its purpose was generally to afford suitors an opportunity in such cases, at their option, to assert their rights in the Federal rather than the state courts."

Defendants' citation of Railroad Commission v. Pullman, 312 U.S. 496 (1941), and City of Chicago v. Fieldcrest Dairies, 316 U.S. 168 (1942), (defendants' memorandum pp. 5-6) in support of their request that this Court stay this proceeding pending the state court determination is peculiarly inappropriate. These cases involve a federal court abstaining from determining the constitutionality of a state statute until the state court has had an opportunity to interpret that statute. Since the determination of the cases turned on an interpretation of state statutes, the federal courts abstained from ruling pending a determination by the state court of the meaning of the state statutes. These decisions were consonant with the policy of the federal court to abstain in cases involving the constitutionality of state statutes so as to enable the state courts to interpret the statute in a

manner that would avoid a constitutional adjudication by the federal courts. The federal courts always seek to avoid "constitutional adjudications where not absolutely necessary." 316 U.S. at 173. No state statute or constitutional question is involved in the proceedings herein and thus no support is found in these cases for defendants' application for a stay.

Defendants (Memorandum pp. 3-4) attempt to suggest that this Court does not have jurisdiction in this case because both this action and the action in the state court are in rem actions and under the principle enunciated in Princess Lida v. Thompson, 305 U.S. 456 (1939), the prior control of the res by the state court precludes this Court from entertaining the suit. However, this action is in personam, not in rem. Plaintiff here seeks an injunction, and "equity acts in personam." The fact that the dispute centers about property does not turn this in personam action into an action in rem. And the state court action is in personam. It is an action brought by the Shaheen group for money damages and injunctive relief. Neither court has a "res", and in neither court has in rem jurisdiction been invoked.

Actions for the recovery of money or for injunctions such as we have here, are in personam actions. See, 1A Moore, Federal Practice ¶0.214 at p. 2502.

The Supreme Court has made it clear that the rule of Princess Lida applies only where the state court action is in rem. See, Donovan v. City of Dallas, 377 U.S. 408, 412 (1964).

This Court's proceeding in no way interferes with any state court's control of a res.

Even in cases where a prior state court proceeding is an in rem action, the federal courts are reluctant to grant stays unless the state court has taken possession of the res and so precluded a federal court from entertaining the suit. In Ferguson v. Tabah, 288 F.2d 665 (2d Cir. 1961) a derivative action was brought by the Trustee in Bankruptcy in the district court for various alleged swindles against the former officers and directors of a corporation of which the bankrupt corporation owned a substantial number of shares. The plaintiff's principal count concerned the invalidity of the transfer of one million shares of the corporation's stock. Defendants sought a stay in the federal court on the ground that a similar stockholder derivative action had previously been filed in the state court and the New York County Supreme Court had prior jurisdiction over the res (the corporation and the disputed shares of stock) which was in issue in the federal court action. The district court refused to grant the stay and issued an impounding order directing that the stock be deposited with the court. The Second Circuit in reviewing the district court decision approved the district court's denial of the stay and found that although the state court action could properly be characterized as in rem, the state court had not effectively taken control of the res prior to the issuance of the impounding order by the district judge and

therefore as a practical matter the state court action was proceeding in personam and did not foreclose the federal court from entertaining the suit. The Second Circuit further noted the wisdom of the district court's denial of the stay based on the broader scope of the pleading filed in the federal court action and the failure of the defendants to show that they were overly burdened by multiple litigation since only two suits were involved.

Wilson v. Schnettler, 365 U.S. 381, reh. den., 365 U.S. 890 (1961) and Harkrader v. Wadley, 172 U.S. 148 (1898) (Defendants' Memorandum, p. 4) pertain to abstention by the federal courts in cases where the federal court's action would interfere with a criminal proceeding in a state court and thus relate to another inapplicable exception to the general rule set forth in Allegheny v. Mashuda Co., supra at p. 6. No criminal proceeding is involved in the case at bar.

PPG Industries Inc. v. Continental Oil Company, 478 F.2d 674 (5th Cir. 1973) (Defendants' Memorandum, p. 4) involved an in personam action brought in the federal court involving the same parties and the same cause of action as those involved in an in personam action previously commenced in a state court. The federal court, in the exercise of its discretion, elected to stay its proceeding pending the outcome of the parallel state court action. The federal court conceded that its stay would have the same effect as a dismissal since the determination of identical claims between the same parties in the state court action could be

pleaded as res judicata in the federal court.

The court in PPG Industries Inc. granted the stay in accordance with its inherent power "to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel and for litigants," citing Landis v. North America Company, 299 U.S. 248 (1936), 478 F.2d at 682. None of these interests of the Court would be served if this Court were to grant the stay requested by the defendants. The party defendants to the suits brought in this Court and the state court are different and the causes of action before this Court and the state court are unrelated. There will be no saving of judicial time by the grant of a stay by this Court and no avoidance of a multiplicity of actions since the two actions are not related. In such circumstances this Court may not exercise its discretion in favor of granting the stay requested by the defendants.

A stay further may only be granted where the balance of equities clearly provides compelling reason why the federal action should not be allowed to proceed. See Landis v. North American Co., 299 U.S. 245, 255 (1936); Mottolese v. Kaufman, 176 F.2d 301, 303 (2d Cir. 1949).

In the present case a stay of the District Court proceeding will impose a serious hardship upon plaintiff, while a denial of that stay will impose no hardships upon defendants. It should be noted at the outset, that, while the New York State proceeding pre-dates the proceeding in this Court, the State

proceeding has progressed no further than the filing of a complaint and motions. Defendants' state action involves ten named defendants covering three continents including a Province of Canada. Their 31 page complaint includes seven causes of action and innumerable allegations. The state lawsuit, having not even begun pre-trial discovery, may proceed for an inordinate length of time. To stay Clarkson, as Trustee in Bankruptcy appointed by a Canadian court, for such a length of time would seriously interfere with the Trustee's ability speedily to acquire and liquidate the assets of the two bankrupt corporations. This need for haste is particularly important with respect to access to the books and records of NRC and PRC as is explained in page 6 of the Clarkson Affidavit in Support of the Motion for a Preliminary Injunction.

In contrast, a denial of the stay will subject defendants to no hardship whatever. It is obvious that all defendants seek is delay.

2. Defendants' Assertions That Comity Does Not Recognize The Trustee Are Frivolous.

Defendants (Memorandum, p. 5) assert that Clarkson has no legal standing in New York and its standing must be recognized under the principles of comity. Clarkson's memorandum (pp. 9-15) in support of this motion sets forth numerous cases in which a foreign receiver was recognized and assisted in the performance of his duties by a court in this country under the principles of comity. These cases are ignored by defendants.

The cases cited by defendants in opposition to the application of the principles of comity to the case at bar are cases which pertain to the limited exceptions to comity discussed in Clarkson's memorandum in support of this motion. Koninlijke Laderfabriek 'O' v. Chase Nat. Bank, 30 N.Y.S.2d 518 (1st Dept. 1941), and Vladikovszsky Ry Co. v. New York Trust Co., 263 N.Y. 369 (1934), are both cases involving a confiscatory exercise of governmental power which offends the law of civilized nations. Bank of Buffalo v. Vesterfelt, 30 N.Y.S.2d 518 (1st Dept. 1941), is a case involving the rights of a local creditor to property of a bankrupt located in the State of New York where the foreign trustee had not come into the New York courts to enforce his title to the property.

Oakey v. Bernett, 52 U.S. 33 (1851) (Defendants' Memorandum p.13) deals with a special situation since it relates to a transfer of real property which is governed by the law of the situs and cannot be governed by a foreign court's bankruptcy adjudication.

Defendants also cite McMillan v. McNeill, 17 U.S. 209 (1919) and Phelps v. Borland, 103 N.Y. 406 (1886). These cases involve the effect of a foreign discharge in bankruptcy upon a United States action or contract. No one has pleaded a discharge in bankruptcy in this case.

None of the cases cited by defendants have any application to the instant case. The case at bar involves an action of

a court of Canada, a sister common law jurisdiction, which was taken after a week-long adversary hearing. Such proceedings cannot be considered to be abhorrent to the laws of civilized countries. The defendants are not local creditors and so cannot assert any special right to claim the property of the bankrupt corporations. Title to real property is not in issue in the proceedings before this Court. In such circumstances the courts have uniformly recognized the title of a foreign trustee to all property located within their jurisdiction and have assisted the trustee in performing his duties under the principles of comity.

3. Defendants Cannot Collaterally Attack The Canadian Court Judgment.

Defendants raise a question as to the propriety of the Canadian Court's appointment of Clarkson as the Trustee in Bankruptcy (affidavit of Richard deY. Manning, pp. 8-9). To the extent that this statement is intended to collaterally attack the judgment of the Canadian Court, such attack cannot be entertained here. A judgment of a foreign court cannot be refused recognition on the ground that an error of fact or law was made. The Supreme Court specifically addressed itself to this issue in Hilton v. Guyot, 159 U.S. 113 (1894) (concerning a French judgment) and stated:

> "[W]e are satisfied that, where there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to

> secure an impartial administration of justice between the citizens of its own country and those of other countries, and there is nothing to show either prejudice in the court, or in the system of laws under which it was sitting, or fraud in procuring the judgment, or any other special reason why the comity of this nation should not allow it full effect, the merits of the case should not, in an action brought in this country upon the judgment, be tried afresh, as on a new trial or an appeal, upon the mere assertion of the party that the judgment was erroneous in law or in fact. The defendants, therefore, cannot be permitted, upon that general ground, to contest the validity or the effect of the judgment sued on."

See also, Restatement 2d, Conflicts of Laws, §106.

This Court does not sit to second-guess a Canadian court on matters of Canadian law, applied to Canadian corporations. Defendants' attempt to re-litigate the Canadian bankruptcy in this Court is without effect.

4. Clarkson Is The Trustee--And The Only Trustee--Appointed As Trustee In Bankruptcy Of PRC And NRC.

The Canadian Bankruptcy Law provides:

> "On a receiving order being made,...a bankrupt ceases to have any capacity to dispose of or otherwise deal with his property, which shall, subject to this Act, and subject to the rights of secured creditors, forthwith pass to and vest in the trustee named in the receiving order...." Canadian Bankruptcy Law §50(5) (emphasis added).

The order of the Supreme Court of the Province of Newfoundland, acting as a federal court of Canada under the Canadian Bankruptcy Act, appointed Clarkson, and only Clarkson, as Trustee in Bankruptcy of PRC and NRC. The orders of appointment, with the seal of the court and the consulate seal of the United States, are annexed as Exhibits A and B to the Barist affidavit. Clarkson is the trustee, and the only trustee "named

in the receiving order...." Canadian Bankruptcy Law §50(5).

Defendants do not controvert these crucial facts. Thus, Mr. Manning admits that "those companies[NRC and PRC] were in fact declared bankrupt on March 12, 1976." (Manning affidavit sworn to March 19, 1976 at p. 2 Exhibit C to Manning affidavit herein). Nowhere does Mr. Manning state that the receiving orders issued by the Supreme Court of Newfoundland did not appoint Clarkson as trustee. Instead, the Manning affidavit states in substance that PRC and NRC are appealing the appointment of Clarkson as trustee. Thus, Mr. Manning averred "there is serious doubt as to the legality of [Clarkson's] appointment." Id. at p. 3 or that "Clarkson's status as Trustee in Bankruptcy is highly questionable...." (Manning affidavit, March 25, 1976 at ¶9) But Mr. Manning does not dispute that the Supreme Court of Newfoundland appointed Clarkson as trustee. Thus the Manning affidavit of March 19, 1976, at the conclusion of its complaints about the Supreme Court of Newfoundland proceeding concedes that "the judge... proceeded at about 5 p.m. on the same date, [March 12, 1976] to appoint Clarkson as receiver or trustee." Manning affidavit, p. 4.

Exhibits A and B to the Manning affidavit of March 19, 1976, Exhibit C to the Manning affidavit herein, the cover page of a proposal made by the debtor for the reorganization of its affairs, in no way contradict the fact that Clarkson, not Cooper & Lybrand Limited, were appointed by the Court as the trustee for PRC and NRC. As they state on their face, they are a

"proposal made by an insolvent person." Thus, examination of the full Proposal (which defendants' papers do not contain, but which is annexed as Exhibit C and D to the Barist reply affidavit), shows that it is a document submitted by the debtor in which the debtor, admitting bankruptcy, urges the Bankruptcy Court to allow it to reorganize its affairs in the manner set forth in the Proposal. The Manning affidavit acknowledges that this Proposal was filed with the Newfoundland Court. Thus, the Manning affidavit states that at 11:07 a.m. on March 12, the Proposal was filed with the Court, and that the judge "refused to consider the governmental appointment and proceeded, about 5:00 p.m. on the same date, to appoint Clarkson as receiver or trustee." Manning affidavit, pp. 3-4. And the Canadian Bankruptcy Act specifically states that the proposal is subject to the approval of the Court. See Canadian Bankruptcy Act, §§ 40, 41, 49. See also the affidavit of Canadian counsel annexed as Exhibit A to the Barist reply affidavit.

However, this Court does not sit to decide whether a Judge of the Supreme Court of Newfoundland acted correctly under Canadian Law in refusing to appoint the debtor's nominee as its trustee. What is the fact, as far as this Court is concerned, is that the Supreme Court of Newfoundland rejected plaintiffs' proposal, and appointed Clarkson as trustee. The operative fact before this Court is that there is only one trustee appointed by Canadian process and that trustee is Clarkson.

Indeed, that Clarkson is trustee and that Cooper & Lybrand is not trustee is recognized by PRC and NRC. The Notice of Appeal filed by NRC and PRC (Barist reply affidavit, Exhibits C and D) states in paragraph 1:

> "The learned trial judge erred in failing to hold that upon filing a proposal to creditors by the debtor all proceedings including the petition before him was stayed."

In other words, Mr. Manning's assertions as to the propriety of the acts of the Supreme Court of Newfoundland are matters to be urged under Canadian law to a Canadian court. Until and unless a Canadian court reverses the action of the Supreme Court of the Court of Newfoundland, PRC and NRC are bankrupt and Clarkson is the trustee.

5. Clarkson "As Defendant" Is A Procedural Ploy.

Question has been raised as to the "propriety" of Clarkson, supposedly a defendant and co-conspirator in the New York State action, as trustee. We note in this respect the following facts:

(a) Clarkson was not named as a defendant in the initial complaint. Clarkson was named as a defendant only in the Amended Complaint, permission to serve which was received by an ex parte order secured by plaintiffs on March 12, 1976, the same date, not coincidentally, on which PRC and NRC were adjudicated bankrupts and Clarkson appointed as Trustee.

(b) In reading the voluminous papers submitted by

plaintiffs there appears no allegation that Clarkson did anything other than act as Receiver and then Trustee pursuant to orders of the Supreme Court of the Province of Newfoundland. Insofar as Clarkson is supposed to have engaged in some sort of "global conspiracy," it was as the authorized agent of the Newfoundland court.

(c) The fact that Clarkson has been sued by the Shaheen group is a fact which will be brought to the attention of the Canadian court. If the Canadian court, on its own motion or that of the creditors before it, were to determine that Clarkson is therefore disqualified as acting as Trustee, or that it has in any way acted in a way in derogation of its fiduciary responsibilities, the remedy is with the Canadian court.

The suit against Clarkson must be recognized for what it is, the easiest sort of procedural trick. Were the Shaheen group's position to be accepted, the right of any trustee to control the bankrupt estate could be defeated by the simple expedient of adding the trustee as a defendant in a multi-party caption, and then asserting that, of course, the trustee cannot take control of property of the estate. Such an obvious ploy, such as is here attempted, should be readily seen through and readily discarded.

III

DEFENDANTS' CONTEMPT OF THIS COURT'S ORDER IS FURTHER PROOF OF THE NEED FOR A PRELIMINARY INJUNCTION

The temporary restraining order issued by this Court required defendants to:

> "give Clarkson immediate and continuing access to the books and records of NRC and PRC; with the right to inventory, examine and copy;"

Service of the temporary restraining order was made on three named defendants on March 23, 1976. On March 24, 1976 defendants' counsel, Richard Manning, obtained from the New York State Supreme Court, a temporary restraining order, which order restrained and enjoined Clarkson:

> "from taking any further action in the State of New York or interfering in any way with the business or access of NRC or PRC, or their officers, located in the State of New York, (a) pursuant to the purported appointment of said defendant as Trustee in Bankruptcy by Order dated March 12, 1976 of the Provincial Court of Newfoundland;".

The temporary restraining order on its face was designed to prevent Clarkson from gaining access to, and copying the books and records of NRC or PRC, in direct interference with the order of this Court. There can be no doubt that it was the intent

of Manning and his clients in obtaining this order to prevent Clarkson from the access to the books and records allowed by this Court, as the securing of the order followed by less than 24 hours the order of this Court. Defendants' purpose in obtaining the State restraining order was made all the more evident by the fact that it was served upon employees of Clarkson while they were in fact in the process of examining the books of NRC and PRC, and these employees, upon examining the State order, ceased their examinations. Clarkson did not return to continue examining these records until the State Court on March 25 modified its order to make clear that the rights granted by this Court were in no way limited by the State order. Thus, the record indicates both that Manning and his clients intended to obstruct the rights granted to Clarkson by this Court, and that his order succeeded in so obstructing Clarkson.

The imposition of contempt penalties is appropriate where an injunctive decree or other restraining order of a court has been violated. United States v. United Mine Workers, 330 U.S. 258, 303-304; Penfield Co. v. Securities and Exchange Commission, 330 U.S. 585, 590. The fact that Manning or the putative plaintiffs in the New York State proceeding are not named parties in the restraining order issued by this Court does not lessen their obligation to comply with the order. First, this Court's order expressly requires:

Memorandum of Law

> "...defendants and their agents, servants, employees and attorneys, and other persons in active participation with them who received actual notice of the Order:
>
> * * *
>
> (2) Are directed to give Clarkson immediate and continuing access to the books and the records of NRC and PRC with the right to inventory, examine and copy;"

Manning is both an attorney to the named parties in this Court's order in his role as attorney for SNR Holding Company, sole stockholder of NRC and PRC, as well as a person in active participation who received actual notice of the Order. The corporate plaintiffs in the New York State proceeding are controlled by the defendants herein. The Supreme Court in Regal Knitwear Co. v. National Labor Relations Board, 324 U.S. 9 (1945) expressly noted that an injunctive order is binding on more than the named parties:

> "The Federal Rules of Civil Procedure provide that: 'every order granting an injunction and every restraining order...is binding only upon the parties to the action their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.' This is derived from the common law doctrine that a decree of injunction not only binds the defendant but also those identified with them in interest, in 'privity' with them, represented by them or subject to their control. In essence it is that defendants may not nullify a decree by carrying out prohibited acts through aiders and abettors, although they were not parties to the original proceeding." 324 U.S. 9,13-14 (1944).

The application of contempt sanctions has been held appropriate when the sanction is imposed for actions involving exercise of legal rights in another judicial jurisdiction, even where the alternate cause of action might have been valid. See In re American Associated Systems Inc., 373 F.Supp. 977 (E.D. Kentucky, 1974).

In the present case, Manning, an experienced attorney, further was undoubtedly aware that his State restraining order, insofar as it conflicted with the order of this Court, was unenforceable. See Donavan v. City of Dallas, 377 U.S. 408, 413. Thus, his action can only have been intended to harass, without legal basis, the attempt by Clarkson to act under the authority of this Court upon the obligations imposed upon it as Trustee in Bankruptcy by the Canadian courts.

We have not moved for the imposition of contempt sanction in that Clarkson has lost only one day and in that we believe it is this Court which must determine if the vindication of its processes requires the imposition of contempt penalties. We do, however, suggest that the acts of defendants is proof of the need for the injunctive relief sought.

CONCLUSION

Clarkson's motion should be granted.

Dated: New York, New York
March 31, 1976

Respectfully submitted,

WHITE & CASE
Attorneys for The Clarkson Company Limited, as Trustee in Bankruptcy, for Provincial Refining Company Limited and Newfoundland Refining Company Limited
14 Wall Street
New York, New York 10005
(212) 732-1040

Of Counsel

Jeffrey A. Barist
Edna R. Sussman

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT

----------X

In Re

PROVINCIAL REFINING COMPANY LIMITED :
and
NEWFOUNDLAND REFINING COMPANY LIMITED

Bankrupts. :

----------:

THE CLARKSON COMPANY LIMITED, as Trustee in Bankruptcy, appointed by the Supreme Court of the Province of Newfoundland, of the property of Newfoundland Refining Company Limited and Provincial Refining Company Limited, :

Plaintiff, : 76 Civ. 1373

against

JOHN M. SHAHEEN, ROY M. FURMARK, ALBIN W. SMITH, PHILIP GANDERT, PETER L. CARAS, PAUL W. RISHELL, WILLIAM J. SHERIDAN, and JOHN DOE, :

Defendants. :

----------X

DEFENDANTS' SUPPLEMENTAL
MEMORANDUM OF LAW

Plaintiff's brief fails to recognize that the point is not whether the State Action is in rem or in personam. The point is that Clarkson's application as Trustee in the State Action is in rem -- to control the res, the chose in action represented by the State Action; it also sought to control assets and here it seeks control of property -- there is no difference whatsoever.

The point was squarely presented to and decided by the Supreme Court in Princess Lida of Thurn and Taxis v. Thompson, 305 U.S. 456 (1939), in a unanimous opinion involving the accounting of a trust estate. The Court held:

> "Certain it is, therefore, that if both courts were to proceed they would be required to cover the same ground. This of itself is not conclusive of the question of the District Court's jurisdiction, for it is settled that where the judgment sought is strictly in personam, both the state court and the federal court, having concurrent jurisdiction, may proceed with the litigation at least until judgment is obtained in one of them which may be set up as res judicata in the other. On the other hand, if the two suits are in rem, or quasi in rem, so that the court, or its officer, has possession or must have control of the property which is the subject of the litigation in order to proceed with the cause and grant the relief sought the jurisdiction of the one court must yield to that of the other. We have said that the principle applies to both federal and state courts that the court first assuming jurisdiction over property may maintain and exercise that jurisdiction

> to the exclusion of the other, is not restrictedto cases where property has been actually seized under judicial process before a second suit is instituted, but applies as well where suits are brought to marshall assets administer trusts, or liquidate estates, and in suits of a similar nature where, to give effect to its jurisdiction, the court must control the property. The doctrine is necessary to the harmonious cooperation of federal and state tribunals." (Footnotes omitted and emphasis added)

Here, the action by Clarkson is clearly an action to "marshall assets", and "administer Trusts".

Respectfully submitted,

MANNING, CAREY & REDMOND
Attorneys for Defendants
122 East 42nd Street
New York, New York 10017
(212) 867-1040

Richard deY. Manning
Of Counsel

Dated: April 1, 1976

DEFENDANTS' NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

18-7

4/1/76

In Re PROVINCIAL REFINING COMPANY LIMITED and NEWFOUNDLAND REFINING COMPANY, LIMITED, Bankrupts.	
THE CLARKSON COMPANY LIMITED, as Trustee in Bankruptcy, appointed by the Supreme Court of the Province of Newfoundland, of the property of Newfoundland Refining Company Limited and Provincial Refining Company Limited, Plaintiff, -against- JOHN M. SHAHEEN, ROY M. FURMARK, ALBIN W. SMITH, PHILIP GANDERT, PETER L. CARAS, PAUL W. RISHELL, WILLIAM J. SHERIDAN and JOHN DOE, Defendants.	~~SUPPLEMENTAL~~ NOTICE OF APPEAL 76 Civ. 1373 (R.O.)

SIRS:

PLEASE TAKE NOTICE that the defendants hereby appeal to the United States Court of Appeals for the Second Circuit from the preliminary injunction order of Hon. Richard Owen dated April 1, 1976, upon the ground that the identical issues involved in this action are presently before the Supreme Court of the State of New York, County of New York, in an action in which the plaintiff

herein has sought to be substituted as plaintiff entitled "SNR Holdings, Inc., et al., v. Ataka America, Inc., et al." (Index No. 03959/1976).

Dated: New York, New York
April 1, 1976

MANNING CAREY & REDMOND
Attorneys for Defendants

By: _____
A Member of the Firm
122 East 42nd Street
New York, New York 10017
(212) 867-104-

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Attorneys for Plaintiff
14 Wall Street
New York, New York 10005
(21-) 732-1040

TRANSCRIPT OF ORAL ARGUMENT

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- -x

In Re :

PROVINCIAL REFINING COMPANY LIMITED :
and :
NEWFOUNDLAND REFINING COMPANY LIMITED, :
Bankrupts. :
: 76 Civil 1373

THE CLARKSON COMPANY LIMITED, as Trustee in Bankruptcy, appointed by the Supreme Court of the Province of Newfoundland, of the property of Newfoundland Refining Company Limited and Provincial Refining Company Limited. :

- -x

New York, New York
April 1, 1976
4:30 P.M.

B e f o r e:

HON. RICHARD OWEN,

District Judge.

A p p e a r a n c e s

WHITE & CASE, ESQS.,
14 Wall Street
New York, N. Y. 10005
Attorneys for Petitioner
JEFFREY A. BARIST, ESQ., of Counsel.

MANNING, CAREY & REDMOND, ESQS.,
122 East 42nd Street
New York, N. Y.
Attorneys for Respondent
RICHARD deY. MANNING, ESQ., of Counsel

Also Present:

Pierre Lamontagne, Esq.

Donald Hoover, Esq.

Miller & Summit, Esqs.,
By: Stuart A. Summit, Esq.

- - -

MR. BARIST: May it please the Court, my name is Jeffrey Barist. With me is Mrs. Sussman from White & Case, appearing on behalf of Clarkson Company Limited, as trustee in bankruptcy of Provincial Refining Company Limited and Newfoundland Refining Company Limited.

With me at counsel table is Pierre Lamontagne, who is Queens Counsel in Canada, with the firm of Weldon, Courtas in Montreal, and I ask your Honor's permission to have him with me at counsel table.

THE COURT: Very good.

MR. BARIST: I thought for a moment that we had a major case, as counsel to the trustee in bankruptcy. After all, there is $250 million or so of refineries in the ground at Newfoundland and the bankrupt corporations PRC and NRC have been found by a Canadian court to be hopelessly insolvent, owing a British firm about $100 million and the Province of Newfoundland $50 million and a Japanese creditor $350 million.

But after listening to some of the argument and the telephone numbers in the case preceding this, I guess we are back down to an ordinary case in federal court.

But really the application before your Honor today is a very simple matter. We represent the trustee in bankruptcy. We seek custody and control of property in the hands of the former officers and directors of the bankrupt corporations.

The former officers and directors, who are defendants herein, do not deny that the corporations are bankrupt. Indeed, by their own pleadings they concede they are bankrupt. They do not deny that they have the property. And, most important of all, they make no claim whatsoever that they continue in custody and control of the property of the bankrupts under any claim of right.

Let me review, if I can, briefly some of the points in the case.

First, we were appointed trustee in bankruptcy by the Supreme Court of Newfoundland. The orders of that court, attested to by the Vice Consul of the United States, are in the papers before you.

Secondly, we have established, and it is not

denied, that a Canadian trustee in bankruptcy, just like an American trustee in bankruptcy, is required to take possession of all property of the bankrupt, in the words of the Canadian statute, "anywhere that property is located." And particularly the trustee is charged to get control of the books and records.

Thirdly, we have established and cited to your Honor the numerous cases where the rights of a foreign trustee, and for this purpose a foreign trustee includes not only foreign in the sense of not being American but foreign in the sense of even being from a sister state, where the trustee or receiver of a foreign jurisdiction is recognized as being allowed to come into the forum jurisdiction, in this case New York, in other cases other states, and proceed to take control of the property of the bankrupt corporations, and where the courts of the forum state, in particular New York, have traditionally assisted the foreign trustee in its role.

We further have established that irreparable injury will occur to Clarkson as trustee and the estate it represents if the application is not granted.

Now, what then are the defendants' arguments? Because on not one of these points do the defendants meet us on the merits. Instead we have the first argument

they make, and it is by far their major argument. They say this court should not proceed, this court should stay its proceedings, because there is another action in the New York State courts.

First let me draw attention to the simple fact that the defendants have made no motion to your Honor for a stay of this court's proceedings. I might add, however, that they have made such a motion to the Court of Appeals for the Second Circuit. But that is something we will apprize the Second Circuit of on Tuesday, that this court has not yet had a motion to rule on for the relief which the defendants seek in the Circuit on Tuesday.

Now let's look at that state court action and what is happening there. The state court action was brought by two Shaheen companies - that is, stockholders of NRC and PRC - alleging first off in the original complaint that two companies, Ataka, which is a Japanese company, and Sumitomo Bank owed NRC and PRC money.

When we were apprized of this proceeding, as trustee in bankruptcy, White & Case, as counsel to the trustee in the United States, or in New York, filed a very simple motion to the state court. We said: If there is a cause of action here belonging to the bankrupt

estate, it belongs to the bankrupt estate and the last people who should be allowed to control the cause of action, which may be worth something, are the former officers and directors who ran these companies into bankruptcy.

Now, that motion is pending before the New York State court. But I want to emphasize a few things about that New York State action, because it is central to understanding the smoke screen which is now being raised in this court.

One, the plaintiff in that case is the Shaheen group, supposedly suing on behalf of PRC and NRC.

Secondly, the relief requested is $100 million in damages and injunctive relief. It is classically and traditionally an in persona action.

I should also add one other thing about that New York State action. We will get onto that later on.

On the very day that Clarkson was appointed as trustee in bankruptcy by the Newfoundland Court, the plaintiffs, defendants herein, by the corporations they control, the Shaheen group, in the New York State court amended the New York State complaint to now name in the complaint Clarkson, alleging that Clarkson had entered into a conspiracy with the former creditors of these

corporations, which includes the British Government, the Province of Newfoundland, allegedly Merrill Lynch, and allegedly some major Japanese corporations and banks, all to do harm to PRC and NRC.

Now let me make one thing very crystal clear. There is only one issue which is raised in this court which in any way is raised in the New York State proceeding, and that is the argument raised by Mr. Manning that Clarkson is "not the trustee." That is the only similarity of issues, because in essence their argument comes down to: Because we have raised the same frivolous argument in two proceedings, this federal court should now stay its hands, deny to Clarkson its Congressionally granted right to come into this court and sue under diversity of citizenship. For what reason?

When we look at the cases which the defendants in this case cite, we see something coming up. First they ignore the basic case, the Allegheny case, which is discussed in our brief, which makes it very clear that this court stays its hand only in exceptional circumstances.

Indeed, the main case relied upon, one of the main cases relied upon by the defendants, Meredith v Winter Haven in the Supreme Court of the United States,

makes the exact same point, which is that a District Court which has otherwise jurisdiction stays its hand only in exceptional circumstances. And we see the type of exceptional circumstances when we look at the cases which my friends for the defendants cite in support of their concept that this court should deny us relief and stay this proceeding.

First they cite abstention cases: The classic case, Railroad Company v. Pullman.

What is an abstention case? An abstention case was classically described by Mr. Justice Harlan in his concurring opinion in Zwickler v. Koota at 389 U.S. 255, and I apologize for not having this in my brief, but Mr. Manning was five hours late in getting me his brief and I didn't get this Zwickler case until this morning. Mr. Justice Harlan stated:

"This Court has repeatedly indicated that 'abstention' is appropriate 'where the order to the parties to repair to the state court would clearly serve one of two important countervailing interests: either the avoidance of a premature and perhaps unnecessary decision of a serious federal constitutional question, or the avoidance of the hazard of unsettling some delicate balance in the area of federal-state relationships.'"

So what is an abstention case? An abstention case --

THE COURT: I don't think I need argument on that.

MR. BARIST: They don't apply. All right.

The second case he has taken out of context is one of my favorite cases, the great case of Princess Lida of Taxis and Thurn...

Princess Lida of Taxis and Thurn stands for one proposition and one proposition only. That is, where there is a state court proceeding in which there is not only an in rem proceeding but where in fact the res, the thing, and I don't mean to be metaphysical, I mean concretely the thing -- is in the state court, the federal court does not have jurisdiction of an action which would interfere with the state court's administration of that thing.

And the classic example is Princess Lida It is a probate proceeding in state court, the most classic of all state court, shall we say, interests, the one area where a federal court says, "Before we get involved in probate, we want to make very certain that we are not interfering with the state courts, which have primary responsibility."

Princess Lida has nothing to do with this case. There is no res in the state court. There is an action for damages and an action for an injunction in the state courts. It is an in persona matter.

Secondly, the action in this court is in persona. We asked for a preliminary injunction, a permanent injunction. Equity acts in persona.

Finally, in any of the cases which have considered the problem of when the court stays its proceedings, and indeed in defendants' case, which is quoted at page 7 of their brief, the Meredith case, they forgot the beginning of the section, they took something out of context in the middle of the section, and they must have overlooked completely the end of the Supreme Court's discussion in Meredith, because it says in Meredity that "we are not going to stay this case," and it says very clearly that "Congress having adopted the policy of opening the federal courts to suitors in all diversity cases involving the jurisdictional amount, we can discern in its action no recognition of a policy which would exclude cases from the jurisdiction merely because they involve state law and because the law is uncertain or difficult to determine."

Now, that's what they did not cite from

Meredith, which is cited at page 7 and the concluding page of their brief.

Finally, on the question of whether or not this court should proceed, it is an application addressed to a court in equity, and in any equitable decision there is the concept of balancing of hardships.

Defendants have come in with not one single reason why they are harmed by this court proceeding. Plaintiff, on the other hand, has come in with very good reasons why this court must proceed.

We do not want to be stayed in New York until the state court comes down with a decision. We wish to proceed with the Congressionally enacted right to litigate in this court on totally different causes of action and, indeed, against different parties than are in the state court.

Now, I would like to go to the next point Mr. Manning has raised in his papers. I'll touch upon this briefly.

In this court he alludes to and in the state court he argues, and then by bringing in state court papers into this court he, I think, has put before this court, though I'm not sure, the argument that "Clarkson is not the true trustee."

When we read Mr. Manning's papers on this subject, we find that what he is doing is arguing. He is telling us that a Canadian judge, applying Canadian law to two Canadian corporations, who have 99 per cent of their assets on the soil of Canada made an error in his decision on Canadian law.

Now, the fact, and the only operative fact, before this court is that the Chief Justice of the Supreme Court of Newfoundland, which is a nisi prius court, a trial court, has issued an order declaring Clarkson to be the trustee.

THE COURT: Well, let me stop you there. It seems to me Mr. Manning is going to have to persuade me that I should be the one to collaterally review this issue. And if I am not, then that issue is not before us.

MR. BARIST: I would suggest that we not collaterally review it. I would think that the Supreme Court decision in the case says we should not review Canadian law. But I should add that because of my fear that Canadian law might be argued today, if the Court wanted to hear something on Canadian law, I asked Mr. Lamontagne to be with me today because I can do no more than read the statute in Canadian law.

THE COURT: Very good. Why don't we save that

for rebuttal, if necessary.

MR. BARIST: The next point the defendants raise is comity. The cases he cites are really very clear. Comity is not a matter of absolute right, and there is a very good reason why this court, the United States court, says "We do not automatically recognize the judgment of all nations automatically," because there are nations on this earth in the 20th century whose judgments we will not recognize and do not want to recognize.

And so in the cases Mr. Manning cites, when representatives of Nazi-occupied Holland wished to enforce the decrees of puppet governments in the United States, we find a way not to recognize them; and when the Soviet Union enters confiscatory decrees, we also find a way not to recognize them.

Here we are dealing with the decree of a sister common law jurisdiction, a decree entered after a week of adversary proceedings in which both sides were represented by counsel of their own choosing before a judge of a common law court.

Now, Mr. Manning assails that court and argues in essence that that was a kangaroo court. I will be very frank. In terms of the argument Mr. Manning has against that court, it sounds very much like the arguments

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any of us have made who have tried cases and lost them and sometimes press on appeal, though I would hope in more temperate language than Mr. Manning has addressed himself with to the Canadian court in this case.

The fact of the matter is that we all lose cases, and that does not mean that the judge who sat on the case was somehow denying us due process of law. There is no exception to the doctrine of comity for a court of Canada.

Next, and I raise this very briefly, we have running through the papers here the grand conspiracy, which is what is now alleged over across the street in State Supreme Court. Everybody is ganging up on poor NRC and PRC and the Shaheens. And so Clarkson, the trustee, is named as a defendant.

What a marvelous procedural ploy. The next time your Honor appoints a trustee in a Chapter X reorganization proceeding, is your Honor's trustee knocked out of the box because the former officers and directors and shareholders of that bankrupt corporation bring a lawsuit arguing that they were improperly driven into bankruptcy, which is a cause of action that pleads a cause of action and adds the trustee as a conspirator?

I have advised the state court, and I will so

advise your Honor, that we will advise the Supreme Court in the Province of Newfoundland that Clarkson has been named as a defendant and put before the Supreme Court of Newfoundland all papers it wishes to see, and I could think of no court,with the exception of this one, before whom I would less desire to be found in breach of fiduciary responsibilities than a common law jurisdiction with very close ties to the equity practice of England.

If Clarkson has breached its fiduciary obligations to anyone, it is very responsible to a judge in equity, administering those equitable traditions of our common law in the Supreme Court of Newfoundland. So, that Clarkson is named as a defendant, it seems to me, is simply meaningless.

To summarize, when we go through defendants' papers, we find that they have done nothing except to create confusion.

And I wish, in closing, to remark on one thing, and I put this forward as my last reason for why I need injunctive relief and why I need injunctive relief very soon and I need custody and control of those books and records and of all property:

The day after your Honor signed the restraining order granting Clarkson access to the books and records,

Mr. Manning secured an ex parte order from the Supreme Court of New York, from Mr. Justice Tyler, restraining Clarkson from taking any proceedings in New York.

That order was served on Clarkson at 5:00 o'clock, when they were examining the books and records. Their representatives immediately came to my office.

I spent the next day trying to see Mr. Justice Tyler, who had a busy schedule, and I did get to see him at 4:00 o'clock that next day.

The affidavit of Mr. Manning to Mr. Justice Tyler said, "Mr. Justice Tyler, your granting this TRO ex parte will in no way affect the Clarkson rights in the federal court." I read that to Mr. Justice Tyler and I said, "Your Honor, it does interfere with our rights in the federal court, and Donovan v. County of Dallas in 377 U.S. says that you cannot do that, and Judge Frankel in the Bekoff v. Clinton case at 344 F. Supp. enjoined proceedings when someone tried to do that." I said, "I can't believe, Mr. Justice Tyler, that you meant to do that by your order."

He said, "I agree." And he immediately modified the order so as to make certain that Clarkson could follow all rights and remedies granted to it by this federal court without being in fear of contempt of the

state court.

But I say very simply, your Honor, sometimes the best evidence of something is what the other side does. They have gone to Mr. Justice Tyler, they have gone to the Second Circuit, and when they finally are supposed to be heard on the merits in this court, they submit not one single answer on the merits.

Thank you, your Honor.

THE COURT: Mr. Manning, before you start, when was it you were in to see me?

MR. MANNING: Friday last.

THE COURT: The 26th?

MR. MANNING: Yes, about 5:00 o'clock.

THE COURT: I'm sorry. Was it the 26th or the 25th? It was on the 25th.

You were here on the 25th. You will recall that I asked you about this order and we had a little conference over here at the side bar.

MR. MANNING: That is correct.

THE COURT: And you made the statement that I had no right to issue that order and that when the people came to look at these books, in words or in substance, you said you threw them out.

Do you remember making that statement to me?

MR. MANNING: Yes, sir, I do.

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THE COURT: Now, was that based on Judge Tyler's order?

MR. MANNING: No, your Honor, it was not.

THE COURT: Whose order was that based on?

MR. MANNING: Perhaps I did not explain to your Honor at that time the sequence of events.

You will recall that when I made that statement you had before you the letter agreement between NRC and PRC and Clarkson where we had voluntarily turned the records over to them on the 17th day of February and which permitted them to occupy our offices from that day forward.

Now, when we threw them out is when we stopped the voluntary cooperation and there started this chain of events.

We have at no time, and I don't think there has been such a charge levied, violated the order of this Court. They have had those records since the moment we knew of the existence of your order.

THE COURT: I recall with some clarity that on the afternoon of the 25th you said that when someone came to your office with my order to look at these books you threw them out.

MR. MANNING: I don't think I was speaking of that point in time, your Honor.

THE COURT: It had to do with my order and it had to do with your saying that I had no power or authority to enter that order and that your request of me, if I may put it in a mild form, was that I should vacate that order immediately.

MR. MANNING: Yes, sir, that was my request.

THE COURT: And I just want to be sure of the point as to the time. This was the afternoon of the 25th, because it followed an argument that I had heard earlier that day for an injunction of a merger. So I can fix that in point of time.

All right. Go ahead. I just wanted to be sure I understood when that happened.

MR. MANNING: I would like to backup to the opening comments that counsel made. He made one Freudian slip. He said that these companies owed an English company $100 million, the Newfoundland Government, $40 million, and a Japanese company $350 million.

Well, the very company that caused this bankrupt and that filed the claims of $350 million was not a Japanese company. It was a company called Atlantic Trading Delaware, which is a Delaware corporation with its principal office in New York City.

THE COURT: That's not going to help me. Let me

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ask you this. I'll let you get back to other things, but I don't think that that detail, even if it is in error, is going to help me.

Is it correct that Clarkson is as of this moment the trustee in bankruptcy for NRC and PRC?

MR. MANNING: It is a trustee. There are two.

THE COURT: All right. Now, is there any question in your mind that, as a trustee, under any law he has the right to take control of the property of the bankrupt and particularly its books and records?

MR. MANNING: Yes, there is.

THE COURT: You question that right?

MR. MANNING: The case is a very clear one.

THE COURT: You question the right of a trustee in bankruptcy to take over the assets of the bankrupt to which he has been assigned?

MR. MANNING: A foreign trustee, because going back to the days of Justice John Marshall in 1819, the law in this country has been that a foreign order in bankruptcy does not per se confer any powers on a trustee to act in this country.

THE COURT: I see. I understand your point.

MR. MANNING: The only way he gains that is by comity.

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THE COURT: All right. In Canada the trustee is entitled, and the only question is whether I should similarly entitle the trustee in the United States.

MR. MANNING: No, sir, that is not the only question.

THE COURT: That is a question.

MR. MANNING: That is a question.

THE COURT: Let me go to the next question.

There are certain books and records that are here in New York City, in the control of your clients, belonging to PRC and NRC. No question about that?

MR. MANNING: That is correct.

THE COURT: Is there any question, and I assume there is because you included in your papers that this letter of February 17, 1976, which I am going to mark as Court Exhibit A, is genuine and authorized?

MR. MANNING: I offered it.

THE COURT: Very good. No question about it, then.

xx (Court Exhibit A marked.)

THE COURT: This is the February 17, 1976 letter, on the letterhead of Newfoundland Refining Company, authorizing the examination of certain books at certain hours. All right.

Now, why should these books not be turned over to the trustee appointed in Canada, with lawful authority there, if not elsewhere at this point, to have those in his possession to carry out his duties as a trustee?

MR. MANNING: Your Honor, let me, if I may, explain to you.

THE COURT: There is apparently no hesitancy to permit him to look at them, because this letter has given that permission already.

MR. MANNING: There have been a lot of charges, falsely based, about things which have happened.

We did not want to be in the position of ever saying that the books and records could not voluntarily be reviewed by Clarkson, because we did not want anyone to feel that there was something that was hidden from them. They have had them before and they have been poring over our books since the 17th day of February.

B6 So the allegations for all this rush, rush injunctive type relief really don't exist, because they have had them, they've been there, they could have made all of the summaries they wanted, they could have proven anything they wanted. They have had the bank accounts, they've told us what checks we could write, all on a voluntary basis, all on a voluntary basis.

Now, the question before this Court, as I see it -- and I listened with interest to the description of the Princess Lida case, but the Princess Lida case happens to be a little bit closer to the subject matter of this case than counsel want to admit.

It involved a trustee and the trustee's rights.

The Princess Lida case did not hold that because a trusteeship is a state proceeding that the federal court should stay out. The Princess Lida case held quite the contrary. The Princess Lida case said: Had Princess Lida gone into the federal court the day before the state court action had been commenced, she would have been in the proper court and this decision would have gone the other way, because the Princess Lida case --

THE COURT: This is the one where there was a proceeding in the Probate Court involving some assets?

MR. MANNING: No, sir. The Princess Lida case involved a trustee's accounting. That's all it involved. Three of the cestui que trusts went into the Pennsylvania State Court on this accounting.

THE COURT: Let's assume that is so. Your state court action here is a stockholders action, which is somewhat different.

MR. MANNING: It is a derivative stockholders

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action.

THE COURT: But you might have some validity if you had asked Justice Andrew Tyler to turn over these books and, while it was pending before him, White & Case had come before me and asked me to turn over the books.

MR. MANNING: That's what they did. Let me read to you what they asked Judge Tyler to do.

They asked Judge Tyler to turn over the title to the chose in action. And I quote from counsel's argument.

THE COURT: That is the lawsuit.

MR. MANNING: Excuse me?

THE COURT: That is the lawsuit.

MR. MANNING: But it is a res, it is a thing. The courts have held from day one that a chose in action is a thing.

THE COURT: I know. But they are trustees. They say: You got a case going in New York. We are the owners of that case. We want to get in it.

They go across the street and they say: We are the trustees in Newfoundland. We want the books.

It seems to me --

MR. MANNING: Let me read to you how they characterize this action in the state court, and I'm quoting from page 4 of the transcript of the argument before Judge Tyler.

He quotes Meyer v. Fleming and he says, he specifically states, that "Title of the claims of the bankrupt vest in the bankruptcy trustee. He is in a position to take control of the litigation."

Whether the litigation is in rem or is in persona is not the question. The question is, he has invoked the jurisdiction of the New York court to do two things. He has invoked the jurisdiction of the New York court to grant him comity, the identical question that is before this Court, and he has invoked the jurisdiction of the New York court to turn over to him the title to an action.

THE COURT: Mr. Manning, I find against you on that issue.

MR. MANNING: May I finish this, your Honor?

THE COURT: No. I don't think you need to argue that point any more. I find against you on that point.

MR. MANNING: I understand that, your Honor. But I would like to read to you what he asked Judge Tyler to do, if I may.

THE COURT: No. I think he got into that case and he exercised any right he wanted to in that case.

MR.MANNING: But that's not what he said. He said he wanted to preserve the assets of the estate. That certainly is a res.

THE COURT: But that is part of the rights that he was exercising, to be a litigant in that case. I don't find that to be inconsistent with coming here.

MR. MANNING: In other words, what the Court is finding is that a chose in action, a lawsuit, is not an in rem res as contemplated by the Princess Lida case, is that correct?

THE COURT: I am only finding that that argument does not persuade me that I should not act here if I am otherwise motivated. Let's put it that way.

Let's go on to the next point.

MR. MANNING: I would like to call your attention again to what the Supreme Court said in the Princess Lida case.

THE COURT: I don't need to hear that argument again.

MR.MANNING: If you will just read the last part of this when you look at the papers --

THE COURT: Very good.

MR.MANNING: The other point is, as I stated, that the state court's jurisdiction was invoked to grant or not to grant comity to Clarkson. Now, they have apparently convinced you of something they were not able to convince Judge Tyler of, because Judge Tyler stayed them from acting

417

in that capacity.

B7 Now we have the unseemly situation before this Court. You say they are the trustee and Judge Tyler may say they are not. Now what do we do?

THE COURT: He may say. I've ruled.

MR. MANNING: The very point of all of these federal cases that are cited, the very point of these cases that have gone to the Supreme Court is that we cannot have the federal court saying, "Turn the papers in the case in the state court over to these people" and the state court judge saying, "You have no standing" and letting me proceed over there. Who do the papers belong to at that point?

THE COURT: Go ahead.

MR. MANNING: I'm asking the Court.

THE COURT: The Court declines to answer that question.

Go ahead.

MR. MANNING: We have a situation right now where I have an action pending. There are a couple of things he didn't tell you about this diligent action of their trustee.

On the same day that Clarkson showed up in our office, we were served by one of their fellow companies, a Japanese company called Sankyo Shipping, that sued us for $9 million. This trustee didn't try to defend that case.

We did and got them dismissed in two days in the federal court before Judge Kanpp.

THE COURT: Anything further?

MR. MANNING: We also have maintained a case for $189 million in damaged by these two companies against the contractor that built this refinery, and no one has shown up claiming they want to take over that case. This is the case they want because this is the case they are named in as a defendant.

THE COURT: Mr. Manning, anything further?

MR. MANNING: No, sir.

THE COURT: I am going to take a recess for five minutes.

MR. SUMMIT: Your Honor, before you recess, my name is Stuart Summit of Miller & Summit in New York City. We have been asked by the government of the Province of Newfoundland, whom we represent to state to this Court that there is at the present time one trustee in Newfoundland acting as the trustee every day, and that is Clarkson, and that there is no other.

Thank you, your Honor.

THE COURT: I thank you very much.

(Recess)

THE COURT: On the basis of the record before me,

I make a finding that Clarkson is the trustee in Newfoundland and there is entitled to the books and records, were they located in Newfoundland.

Under comity it is conceded I have the power to turn them over to a validly appointed trustee, and as far as I am concerned this is not the Court to collaterally attack that appointment. If there is to be such an attack, it is in Newfoundland not before this Court. These books are concededly in the control and in the possession of the defendants here.

Along the way I wish to note that I reject the abstention argument because there is no state law question or similar question to be resolved first by a state court as to which I should abstain.

I find that consent was in fact given to examine all of these books in the letter of February 17th, 1976, which is marked Court's Exhibit A.

I find that given the history of steps before me starting with March 23rd, when I signed this order based upon a concern of the moving party that these documents might be destroyed or disappear, that there is certainly some substantial evidence that that is a risk, finding as I do that on the 24th an order was obtained from a Supreme Court judge in New York County which was used to block the

examination on that day until that was vacated, and counsel for defendants coming into this court on the evening of the 25th and stating to me that when my order had been presented he had declined to honor it and had said that he had thrown the order presenter out and demanding that I vacate the order forthwith because I had no power or authority to enter it.

These are, in my judgment, strong evidence of an effort to block this inquiry, to block access to these books to which, as I say, I find the trustee has an absolutely lawful right. And I find that there is an enormous risk of irreparable injury to the trustee here were they not turned over, and that they may well be destroyed or vanish and be unavailable at the time the trustee has a lawful need for them.

Now, given the agreement of February 17th, Court's Exhibit A, it would similarly appear there is little hardship if these books are in fact turned over to the trustee under the rules of comity, and we will just turn the situation around. Those of the defendants who wish to copy books in the trustee's possession may have the right to do so.

Consequently, I am making my temporary restraining order the preliminary injunction and I am directing that

Clarkson be given forthwith the books and records of NRC and PRC in the custody of the defendants in this case or their agents, servants, employees or attorneys or any other persons in active participation with them, with the proviso that they may make appropriate copies thereof at convenient times and places.

Anything further?

B8 MR. BARIST: Yes, your Honor. The preliminary injunction application also asked for the turning over to Clarkson, as trustee, of all othe property besides books and records.

THE COURT: What other property is there? Because you have not argued that to me and I don't know what is involved.

MR. BARIST: If I could, your Honor, they are two-fold. One, there are bank accounts in the United States. Two, as part of our investigation we discovered that there are accounts receivable owing to one of the bankrupts which are in the United States.

Now, the irreparable injury which would occur if the preliminary injunction did not give us control over these books and records is that it is conceivable that an intervening creditor could come in and place a lien on property of the bankrupts in the jurisdiction and thereby set up a

fight as to who has priority over this.

Therefore our application for a preliminary injunction also includes the request for all other property of the debtor in the jurisdiction, all property of the debtor within the control of the defendants.

THE COURT: Mr. Manning, what say you to this last request?

MR. MANNING: Well, it is very unusual in this kind of a motion to have a case tried on -- some account receivable he is talking about? We are going to decide whether the account receivable is proper and payable now, and all that in this motion here? That isn't what he asked for. He asked for some papers.

All I would like to do, your Honor, is ask that you stay the effect of your order until the Court of Appeals hears my appeal on Tuesday.

THE COURT: No. I decline to do that.

MR.MANNING: Because I am challenging the jurisdiction of the Court to act in this matter, and I think I am entitled to it.

I have no objection to him looking at the books. They are copying the records now. The records are not going to escape. They have known what records there were since the 17th. No one has taken any records out. They know

exactly what the situation is.

I just say let them leave the records where they are, where they are sitting with them. They are in our offices every day, this gentleman right over here on my right. All I am asking is that you stay the effectiveness of this order until I have an opportunity to go before the Court of Appeals on Tuesday.

THE COURT: Mr. Barist, do you have to your satisfaction a complete inventory of all of these records?

MR. BARIST: Your Honor, I don't know. With respect to the books and records, I am satisfied with your Honor's order. There is one thing which I wanted to emphasize, though, in terms of the "voluntariness" here.

We have been given limited access to the documents marked Court's Exhibit A. When we were appointed trustee, we were denied any access, which was what necessitated our application to your Honor in the first place.

Secondly, I am not asking this Court on this motion to determine title to property. All I am asking this Court to do is to direct that the property which is the property of NRC and PRC within the custody and control of the defendants, who the Court has found have no right to the control of that property, be turned over to the trustee.

But, besides, what I would plan to do is very

simple, your Honor. I would plan to take custody and control, pursuant to your Honor's order, of the books and records --

THE COURT: What is involved. Are we talking about two file drawers, three file drawers, five, ten? What?

MR. BARIST: I don't know the answer to that. I have never seen them.

MR. MANNING: This gentleman knows (indicating). He is sitting right there.

MR. BARIST: Please, Mr. Manning.

THE COURT: Let me find out. What is involved in these letters?

MR. HOOVER: Probably a roomful or two rooms full of books and backup documents.

MR. BARIST: Your Honor, we would request that you not stay your order, that the preliminary injunction go in immediately, and that we get not only the books and records but that we also get custody and control of any other property or the indicia of any other property such as bankrupts, and in the first instance we won't get into a quarrel as to what is the property of NRC and PRC, we'll ask the defendants simply to turn over to us what they know to be the property of NRC and PRC. If there are other problems, we will be back.

THE COURT: Suppose I were to stay this order until

noon tomorrow to allow Mr. Manning to seek a stay from one judge of the Court of Appeals. There is no problem with that, is there?

MR. BARIST: We lose another day then, your Honor.

THE COURT: I understand.

MR. BARIST: The restaining order gave us access. If your Honor stays this order, may I point out that that also lifts the stay on the defendant's disbursing or altering or doing something with the property.

So, if your Honor allowed us access under the T.R.O., it seems to me that with a perfectly frivolous appeal in the Court of Appeals, in which the Court of Appeals does not have jurisdiction, if Mr. Manning wants to take an appeal from the preliminary injunction your Honor is issuing today, there is a procedure by which he can do it and by which he can go to the Court of Appeals for a stay of that.

MR. MANNING: Your Honor, might I suggest that the T.R.O. remain in effect until whatever time you will grant me to endeavor to get a stay from the Court of Appeals? And at the time that the T.R.O. expires, this order that you are entering today can then become effective. That will take care of both points. They would have the same rights they have at this moment and I would have an opportunity to be heard by the Court of Appeals before this order goes into effect.

THE COURT: I am going to leave the TRO in effect but I am also going to order the preliminary injunction as of this moment. I will stay the preliminary injunction until noon tomorrow. But the conditions of the temporary restraining order, which are set forth in my order of March 23rd restraining removing,disbursing, secreting or otherwise of property, or any transferring of the books, and continuing to give Clarkson access to these books, all of those provisions shall remain in full force and effect.

MR. MANNING: I have no problem with that, your Honor.

THE COURT: So that if you want to go in tomorrow and make an inventory of these in the morning, you are absolutely at liberty to do so. I think that covers your problem.

MR. BARIST: Will the order of preliminary injunction also include the turning over to us of the other property?

THE COURT: I am a little troubled there because I don't quite know what I am being asked to turn over on a record that is sufficiently concrete to let me rule intelligently.

MR. BARIST: If I could, your Honor, there are

bank accounts in the jurisdiction. And when I said there are accounts receivable, there is money owing from third parties to PRC and to NRC.

MR. MANNING: I don't they should be litigated in this motion, your Honor.

THE COURT: Can't you bring that on before me in a way that gives Mr. Manning a chance to oppose it?

MR. BARIST: I will take your Honor's suggestion on that. If your Honor wishes to have more concrete facts with respect to the other property, I will take your Honor's advice.

THE COURT: You are probably right that as the trustee you are entitled to anything that is the bankrupt's property. Undoubtedly you are right. But it is a question of dealing with it in a proper procedural way.

MR. BARIST: The problem is this: At this point we are not even certain what is here under the custody and control of the defendants. So the reason we phrased the order to turn over all property in the way that it is, in that broad way, paragraph 4 of our request for a preliminary injunction on page 2, is that whatever they know they have that belongs to us, let them give it to us, whether it is a bank account or a pencil

sharpener.

THE COURT: I'll tell you what I'll do. I will order that any property of the bankrupt that comes into the possession of any defendant is to be retained. This would, I assume, include any accounts receivable that are in fact paid, any --

MR. BARIST: The preliminary injunction would enjoin the defendants, would continue the restraining order's restraint on the defendants, from disbursing or secreting any property which comes into the hands of the defendants, their agents, et cetera.

THE COURT: Yes. I so order that.

MR. BARIST: Thank you, sir.

MR. MANNING: Your Honor, there is a problem. These books and records we are talking about include the papers that are essential to my proof of that case across the street. Am I deprived of those papers now?

THE COURT: You will have to make copies of what you want across the street.

MR. MANNING: But I have a best evidence rule in that court that says I ought to put the best evidence in.

MR. BARIST: I waive it.

THE COURT: It will be waived.

MR. MANNING: He can't waive it. The defendants in the case are entitled to oppose it.

THE COURT: There are lots of ways to get around it, including, if you can't present the best evidence because it has been put under an injunction by the District Court, then the second best evidence becomes admissible.

MR. MANNING: Does this include all of the other papers involved in all of the pending lawsuits in New York City?

THE COURT: I have not got that question before me.

MR. MANNING: It says "papers."

THE COURT: Anything further?

MR. BARIST: No, your Honor.

MR. MANNING: It says "papers." That's what I am being ordered to do.

THE COURT: Yes, I understand.

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